United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
May 20, 2025
Lyle W. Cayce
Clerk

No. 24-40747
Summary Calendar

CHRIS NEUENS,

Plaintiff—Appellant,

versus

UNITED STATES POSTMASTER DOUG TULINO, *Acting Postmaster General*,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:24-CV-112

Before CLEMENT, ENGELHARDT, and DOUGLAS, *Circuit Judges*.

PER CURIAM:[*]

Plaintiff-Appellant Chris Neuens, proceeding pro se, appeals the dismissal of his claim for wrongful termination against Defendant-Appellee

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

Doug Tulino, Acting Postmaster General.[1] For the following reasons, we AFFIRM.

I.

Neuens began working as a mail handler assistant for the United States Postal Service's Processing and Distribution Center in McAllen, Texas in April 2021. On May 25, 2022, the U.S. Postal Service (USPS) notified Neuens that his employment would be terminated as of July 2022 for "unacceptable conduct," including "[e]ntering and walking around a Postal Facility while not on duty to promote and propagate false information and narratives about the U.S. Postal Service" and "[u]nlawfully using and attempting to act as a certified union representative." The termination letter from USPS further detailed that Neuens "posted inappropriate information and false solicited material on the National Postal Mail Handlers Union board" and "posted classified and personal information pertaining to [Equal Employment Opportunity complaints] to the detriment of ongoing investigations." Neuens also failed to comply with earlier warnings "to cease reporting to work early, not on the clock, just to walk the workroom floor and solicit[] and incite confrontations with other employees."

On March 20, 2024, Neuens sued then-Postmaster General Louis DeJoy for wrongful termination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Neuens's complaint was devoid of factual allegations; it simply charged DeJoy with wrongful termination, with no further details. Neuens then moved for appointment of counsel on two separate occasions, but the district court denied both motions. DeJoy filed a motion to dismiss Neuens's complaint under Federal Rule of Civil Procedure

[1] At the time of Neuens's suit, Louis DeJoy was the Postmaster General.

12(b)(6). Neuens then requested counsel for a third time, which the court again denied. Neuens filed two separate oppositions to the motion to dismiss.

The district court granted the motion to dismiss. The district court reasoned that without any factual allegations, Neuens's original complaint failed to state a claim for wrongful termination, and the court construed Neuens's oppositions as offering allegations that he would have added to his complaint if allowed to amend. The only relevant allegations in these filings are that Neuens is "Indian/Asian" with dark skin color; that "[USPS] targeted [Neuens] [b]ecause of [his] Race, National Origin or Color"; and that USPS's alleged pretext for termination was that Neuens was "coming to work too early." The district court found that these allegations triggered the *McDonnell-Douglas* burden-shifting framework, which requires Neuens to prove that he "(1) is a member of a protected group; (2) was qualified for the position at issue; (3) was discharged or suffered some adverse employment action by the employer; and (4) was replaced by someone outside his protected group." *Stroy v. Gibson on behalf of Dep't of Veterans Affs.*, 896 F.3d 693, 698 (5th Cir. 2018) (quotations omitted); *see Willis v. Cleco Corp.*, 749 F.3d 314, 320 (5th Cir. 2014). Concluding that Neuens's allegations in his oppositions did not show that he was qualified for the position or that he was replaced by someone outside his protected group, the district court found that amendment would be futile and therefore Neuens's claim should be dismissed with prejudice.

Neuens timely appealed the dismissal.

II.

"We review a district court's grant of a motion to dismiss for failure to state a claim de novo, 'accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff.'" *Bustos v. Martini Club, Inc.*, 599 F.3d 458, 461 (5th Cir. 2010) (quoting *True v. Robles*, 571 F.3d

412, 417 (5th Cir. 2009)). "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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

III.

On appeal, Neuens fails to identify any error on behalf of the district court, and he fails to explain why he should have been allowed to amend his complaint. "Generally a district court errs in dismissing a pro se complaint for failure to state a claim under Rule 12(b)(6) without giving the plaintiff an opportunity to amend." *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998) (per curiam). "Granting leave to amend is not required, however, if the plaintiff has already pleaded his 'best case.'" *Brewster v. Dretke*, 587 F.3d 764, 768 (5th Cir. 2009) (per curiam) (quoting *Bazrowx*, 136 F.3d at 1054).

"A plaintiff has pleaded her best case after she is 'apprised of the insufficiency' of her complaint." *Wiggins v. La. State Univ.—Health Care Servs. Div.*, 710 F. App'x 625, 627 (5th Cir. 2017) (per curiam) (quoting *Dark v. Potter*, 293 F. App'x 254, 257 (5th Cir. 2008) (per curiam)). A motion to dismiss can apprise the plaintiff of the insufficiency of his complaint and provide an opportunity to plead his best case in response. *See Dark*, 293 F. App'x at 257 (noting "[w]hile plaintiff had not filed a supplemental complaint, his extensive response to the motion had provided him ample opportunity to state his best case"). Further, "[a] plaintiff may indicate she has not pleaded her best case by stating material facts that she would include in an amended complaint to overcome the deficiencies identified by the court." *Wiggins*, 710 F. App'x at 627.

Here, Neuens was apprised of the insufficiency of his complaint, and he failed to prove that he had not pleaded his best case. *See Brewster*, 587 F.3d at 768 ("Brewster gives no indication that he did not plead his best case in

his complaint and more definite statement. He does not state any material facts he would have included in an amended complaint."). Both of Neuens's oppositions lack allegations that, if incorporated into an amended complaint, would remedy his pleading deficiencies. *See Wiggins*, 710 F. App'x at 628 (finding plaintiff pleaded best case because "she has not identified any material facts she would include in an amended complaint if given the opportunity to overcome the deficiencies identified by the district court"). And on appeal, Neuens continues to fail to identify factual support for his claim. *See Goldsmith v. Hood Cnty. Jail*, 299 F. App'x 422, 423 (5th Cir. 2008) (per curiam) (affirming dismissal of pro se complaint where plaintiff did not "explain what facts he would have added or how he could have overcome the deficiencies found by the district court if he had been granted an opportunity to amend"); *Shope v. Tex. Dep't of Crim. Just.*, 283 F. App'x 225, 226 (5th Cir. 2008) (per curiam) ("[O]n appeal, Shope does not allege what facts he would include in an amended complaint.").[2]

For these reasons, we AFFIRM.

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[2] To the extent Neuens objects to the district court's denial of his motions for appointment of counsel, he fails to identify any abuse of discretion, and we find none. *See Blackman v. Glob. Indus. Offshore, L.L.C.*, 228 F. App'x 410, 411 (5th Cir. 2007) (per curiam) ("We review for abuse of discretion the refusal to appoint counsel for a Title VII plaintiff.").