

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-1778
Summary Calendar

CATHERINE M. STARR,

Plaintiff-Appellant,

versus

DR. T. WILLIAM HOWARD, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Mississippi
(CA H 90-0190(W))

(February 18, 1993)

Before GARWOOD, HIGGINBOTHAM and BARKSDALE, Circuit Judges.*

GARWOOD, Circuit Judge:

Plaintiff-appellant Catherine Starr (Starr) commenced *pro se* this suit generally claiming that her rights were violated by defendants-appellees Dr. T. William Howard (Howard), Dr. W.C. Bass (Bass), Dr. Henry A. Maggio (Maggio), Dr. Jerry M. Ross (Ross), Robert Owens (Owens), Howard McNeill (McNeill), Gulf Coast Mental

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Health Center (GCMHC), Memorial Hospital of Gulfport (MHG), and the Mississippi State Hospital at Whitfield (MSH). Her suit also seemingly asserted some sort of conspiracy by the defendants and that they had committed against her the state law torts of defamation of character, negligence, and malpractice. The district court, following diverse motions by several defendants and letter responses by Starr, ultimately dismissed the suit without prejudice. It determined that any conspiracy claim failed to satisfy the requirements of notice pleading, any other unnamed federal claims also failed to satisfy the requirements of 42 U.S.C. § 1983, that there was no diversity jurisdiction, and that the claims against MSH were barred by the Eleventh Amendment. Finding that the district court did not reversibly err, we affirm.

Facts and Proceedings Below

As can be gleaned from official records and Starr's *pro se* filings, Starr claimed that on or about September 6, 1985, her husband Michael filed an Affidavit and Application for Commitment Proceedings of Starr with the Chancery Clerk of Harrison County, Mississippi.¹ The affidavit was signed by Starr's step-uncle, McNeill, in the capacity of a witness. On the same day, a state chancellor issued a writ to the Harrison County sheriff's office to take custody of Starr and deliver her to MHG, a private hospital. Sheriff's officer sergeant Owens executed the writ. Owens

¹ This application alleged that Michael had earlier contacted GCMHC, a state agency, and a doctor at the facility helped him to complete commitment papers, but these papers were never filed. Apparently, this alleged activity is the only link GCMHC has to this case.

transported Starr to MHG where she was examined the next day by physician Howard and either psychologist Bass or Maggio. The two doctors determined that she was a paranoid schizophrenic and reasonably expected "to physically injure . . . herself or others." She alleges that she was kept at MHG for observation for over seventy-two hours. The commitment order reflects that she was given an admission hearing on September 10, and that at the hearing she was provided with court-appointed counsel, and at its conclusion the special master found by clear and convincing evidence that Starr posed a "substantial likelihood of physical harm to . . . herself or others," and ordered her to be committed to MSH. Starr was released from MSH about a month later.

On September 13, 1990, Starr, a Mississippi citizen, filed a one-page, one-paragraph complaint seeking one billion dollars in damages against Howard, Bass, Maggio, Owens, Ross, McNeill, GCMHC, MHG, and MSHS. All Mississippi citizens or entities. She claimed that the defendants had denied Starr her constitutional rights and, inferentially, had engaged in some sort of conspiracy.² This complaint was fleshed out by a letter Starr wrote to the court stating that Owens had invaded her privacy by taking her into custody, and that she was subsequently abused at MSH.³

² She alleged that, "They have had me followed, monitored and watched, and tell my husband every move I make, so, he then can abuse me and my children" The defendants also apparently conspired to keep Starr unlawfully confined.

³ Her precise allegations concerning what happened at MSH were, "I sleep on a bed that someone had peed in and eat out of dirty trays. I was ordered to pull all my clothes off, and parade to the shower in front of a bunch of perverts. I was examined by a Doctor Ross. He examined my female parts and I saw

As the suit progressed, the court entered orders on February 5 and again on April 4, finding that Starr's responses were inadequate, and warning Starr that her complaint would be dismissed unless she adequately responded to the motions of several of the defendants to dismiss, for change of venue, for summary judgment, and for more definite statement. Starr's responses consisted of more letters asserting diverse abuses.⁴ She also contended that her commitment was unlawful because Mississippi's civil commitment law was unconstitutional. These responses the court found inadequate, and on June 28, 1991, it dismissed her complaint without prejudice.

Discussion

Because Starr has proceeded *pro se* from the inception of this lawsuit, the district court properly recognized its obligation to construe her pleadings liberally. *Haines v. Kerner*, 92 S.Ct. 594, 596 (1972); *Wesson v. Oglesby*, 910 F.2d 278, 281 (5th Cir. 1990). Even so, "Pro se litigants are not excused from complying with

lights blink on and off, as if they where taken pictures or something."

⁴ Starr alleged that Bass, Maggio, and Howard "violated the confidentiality law by releasing information" about Starr while she was confined at MHG, and that "Dr. Maggio and Dr. Bass equally shared the responsibility for my commitment." She made more allegations against Ross that he "was negligent for keeping me in confinement without any just cause and making a diagnosis without any proof or evidence. He put a lable [sic] on me that is damaging to me. Paranoia. Just because these people ordered him to." She further alleged that she was denied therapy at MSH and that she did not receive proper nourishment because the MSH personnel were "getting the food that was assigned to us." She also alleged that GCMHC was guilty of willful and malicious acts and acts of gross negligence for telling Starr's husband how she could be committed.

court orders or substantive and procedural law." *American Inmate Paralegal Assoc. v. Cline*, 859 F.2d 59, 61 (8th Cir. 1988). Here, the district court ordered her twice to properly respond to defendants' motions, before it dismissed her case for failing to meet minimal pleading requirements and for failing to properly allege jurisdiction.

We assume that Starr's complaint is based on a violation or violations of 42 U.S.C. § 1983 since she asserted deprivation of her constitutional rights. See *Greco v. Orange Memorial Hospital Corp.*, 513 F.2d 873, 877 n.7 (5th Cir. 1975) (to proceed under section 1983 a plaintiff must allege deprivation of a constitutional right by a defendant acting under color of law). Viewed as a section 1983 action, Starr's claims can only proceed against entities found to be state actors operating under color of law. *Id.* Starr does not have a claim against McNeill because it is not alleged that he acted under color of law, nor are any facts alleged that tend to indicate that he did so. See *Brummett v. Camble*, 946 F.2d 1178, 1184 (5th Cir. 1991) (noting that "a private person does not act under color of law simply because he invokes state authority"). Similarly, MHG, as a private hospital, is not presumed to have acted under color of law, and since Starr has failed to allege that MHG's actions occurred under color of law, or facts so indicating, MHG was not a state actor. Similarly, doctors Bass, Maggio, and Howard, who examined Starr at MHG, are also not alleged or shown to be state actors. Since the rest of the defendants are state agencies or employees of state agencies, we will examine the alleged constitutional deprivations to determine

if Starr made out a sufficient complaint against any of the remaining defendants.

The gravamen of Starr's complaint seems to be that the defendants violated her right against unreasonable search and seizure⁵ because she was committed under unconstitutional procedures as set forth in Miss. Code Ann. §§ 41-21-65 to 41-21-73 (Supp. 1991).⁶ The only claim we can infer is that the statute is unconstitutional because it fails to satisfy minimum due process requirements.⁷ We note initially that the statute has never been held to be unconstitutional. In *Vitek v. Jones*, 100 S.Ct. 1254 (1980), the Supreme Court approved a list of minimum requirements for commitment of a convicted felon to a mental institution. *Id.* at 1264-65. Although we have not enunciated the due process requirements for a civil commitment proceeding, and since Starr has failed to enunciate any specific due process violations, we will use, without adopting, *Vitek* as a guide in addressing the constitutionality of the Mississippi statute. See *Doe v. Austin*,

⁵ The Supreme Court has defined "seizure" under the fourth amendment as a "'means of physical force or show of authority, . . . in some way restrain[ing] the liberty of a citizen.'" See *Graham v. Connor*, 109 S.Ct. 1865, 1871 n.10 (1989) (citing *Terry v. Ohio*, 88 S.Ct. 1868, 1879 n.16 (1968)).

⁶ The remainder of her complaints alleging that she was improperly examined, information about her was improperly disseminated, and that the defendants are following her, are entirely too vague and conclusory to serve as a basis for liability. She fails to allege which laws or policies have been followed or broken, or any specifics on how these alleged violations occurred.

⁷ We draw this inference from one of Starr's letters to the court that states, "All you have to do is have three people go down and sign papers against you, and your life is not your own. They sign you over to the state."

848 F.2d 1386, 1393-94 (6th Cir. 1988) (describing the *Vitek* requirements and applying them to Kentucky's civil commitment statute). Upon reviewing the Mississippi statute, this Court finds that the statute's ample due process requirements meet the minimum *Vitek* standards, and that it cannot be said that clearly established law rendered belief in the statute's facial constitutionality objectively unreasonable in September and October 1985.⁸

The individual defendants, to the extent they are state actors, are entitled to the defense of qualified immunity unless their conduct was objectively unreasonable in light of the legal rules clearly established at the time the conduct was taken. *Anderson v. Creighton*, 107 S.Ct. 3034, 3038 (1987). The burden is on Starr "to come forward with summary judgment evidence sufficient to create a genuine issue as to whether the defendant's conduct was objectively unreasonable in light of clearly established law." *Pfannstiel v. Marion*, 918 F.2d 1178, 1183 (5th Cir. 1990). To avoid dismissal of a section 1983 claim, Starr's complaint "cannot be cast in 'broad, indefinite and conclusory terms.' . . . Rather, the plaintiff must plead specific facts with sufficient particularity to meet all the elements necessary to lay a foundation for recovery, including those necessary to negative the defense of qualified immunity." *Brown v. Texas A & M Univ.*, 804 F.2d 327, 333 (5th Cir. 1986) (citing *Elliot v. Perez*, 751 F.2d

⁸ We would also note that Starr was not committed on the mere basis that she was suffering some vague "mental illness" but on the express allegation and finding that she was a danger to herself and others.

1472, 1479 (5th Cir. 1985)).

Starr fails to present any facts that would negate the defense of qualified immunity for the individual defendants in this case. Owens was acting under a court order, which Starr does not contend was in any way improperly issued; therefore Owens was entitled to immunity. See *Haigh v. Snidow*, 231 F.Supp. 324, 326 (S.D. Cal. 1964) (holding that "[t]he order of the court being regular on its face, and issued by competent authority, the sheriff and his deputies incurred no civil liability in executing it"). Starr's only allegation against GCMHC is that, even though it was not involved in committing Starr, one of its employees acted improperly in telling Starr's husband how she could be committed. GCMHC, as a governmental entity, may be liable under section 1983 "where the alleged unconstitutional activity is inflicted pursuant to official policy" but such liability "may not be imposed on a government entity on a theory of respondeat superior for actions of government employees." *Johnson v. Moore*, 958 F.2d 92, 93 (5th Cir. 1992). Since Starr is not alleging that any policy of GCMHC is defective, but only that one of GCMHC's employees engaged in improper behavior, GCMHC is immune from liability. MHG is not a state actor, nor is any policy of MHG allegedly constitutionally improper.⁹ It is not alleged that any of the defendants violated

⁹ As pointed out by the district court, MSH, as a subdivision of the state of Mississippi, enjoys absolute immunity from suit under the Eleventh Amendment. In *Will v. Michigan Dept. of State Police*, 109 S.Ct. 2304 (1989) the Court held that "[s]ection 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties. The Eleventh Amendment bars such suits unless

Miss. Code Ann. §§ 41-21-65 to 41-21-73, nor do such facts as are alleged show such a violation by any defendant. Even if the hearing was not in accordance with the law, nothing indicates that such a failure was attributable to any of the defendants.

The remaining section 1983 claim that Starr may be asserting is apparently a conspiracy, which is vaguely described as the defendants acting together to deny Starr her constitutional rights.¹⁰ As we have held, "To establish a cause of action based on conspiracy a plaintiff must show that the defendants agreed to commit an illegal act." *Arsenaux v. Roberts*, 726 F.2d 1022, 1024 (5th Cir. 1982). No such showing has been made here, so Starr has failed to make out a conspiracy claim since "[t]he conspiracy allegations made by [Starr] are conclusory, and more than a blanket of accusation is necessary to support a § 1983 claim." *Id.* Therefore, the district court did not abuse its discretion in dismissing Starr's section 1983 claims.

After the district court had dismissed Starr's claims under

the State has waived its immunity." *Id.* at 2309. Mississippi has not waived its immunity from suit in federal courts. Miss. Code Ann. § 11-46-5(4) (Supp. 1992) ("Nothing contained in this chapter shall be construed to waive the immunity of the state from suit in federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.").

The allegations against Dr. Ross individually (see notes 3 & 4, *supra*) do not show a then clearly established constitutional violation on his part personally so as to defeat qualified immunity.

¹⁰ Reviewing her filings, we find only two alleged facts in support of a conspiracy: (1) McNeill's brother is or was a constable in Harrison County; and (2) McNeill expressed satisfaction to the special master after Starr's admission hearing. Neither of these facts is sufficiently relevant to link the defendants to a conspiracy.

federal law, all that remained were her state law claims of negligence, malpractice, and defamation against citizens of Mississippi. Since Starr is also a citizen of Mississippi, her suit lacked complete diversity as required under 28 U.S.C. § 1332. Therefore, having dismissed the federal claims, the district court did not abuse its discretion in dismissing Starr's state law claims, which were merely pendent claims.

The "district court and opposing parties are not required to forever sift through such pleadings after [Starr had] been given notice of the pleading requirements of the case." *Old Time Enterprises, Inc. v. Int'l Coffee Corp.*, 862 F.2d 1213, 1219 (5th Cir. 1989). Where, as here, if the district court gives the plaintiff opportunity to amend the complaint, and she still fails to adequately allege a claim, the district court may dismiss the complaint. *Jacquez v. Procunier*, 801 F.2d 789, 792-93 (5th Cir. 1986).

Conclusion

None of Starr's claims on appeal demonstrate reversible error in the district court's dismissal without prejudice of her complaint. Therefore, the district court's judgment is

AFFIRMED.