IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 91-5107

CECIL D. SLAYTON,

Plaintiff-Appellant,

VERSUS

TOM RAINS, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(88 CV 170)

(December 3, 1992)

Before REAVLEY, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

Cecil Slayton challenges the dismissal of his 42 U.S.C. § 1983 action, which alleges that the City of Sherman, Texas, and several of its police officers violated his constitutional rights. The officers defended by claiming they are entitled to qualified immunity. The district court ordered Slayton to amend his

[*] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

complaint to add specificity. When the court determined that the complaint still did not contain facts specific enough to defeat the officers' qualified immunity defense, it dismissed the complaint. Finding no error, we affirm.

I.

Slayton contends that two Sherman police officers and a Grayson County deputy sheriff, with the acquiescence of the chief of police and the city itself, subjected Slayton to four unlawful searches, a false imprisonment, and an illegal arrest. Slayton's original complaint asserted that on June 26, 1986, officer Sandy Dittforth and deputy sheriff Steve Flowers rang the doorbell at Slayton's mother's house while officer Tom Rains stood at the back door. The officers then opened the door, entered the house, and arrested Slayton. The complaint alleges that the arrest warrant the officers produced was based solely upon "false, hearsay information coerced . . . from several juveniles . . . known to hold little regard for truth and honesty . . . ." The complaint completes this allegation by claiming that the "interrogations" conducted of the juveniles were "slanderous" and an "invasion of his privacy."

The complaint next asserts that the three defendants proceeded illegally to search Slayton's car and mobile home. When Slayton refused to consent to a search of the northeast bedroom of his mother's house, Rains left to obtain a search warrant. The complaint agrees that the officers produced search warrants for the

car, the mobile home, and eventually the northeast bedroom but alleges that none of the warrants was valid because (1) none was signed by an affiant; (2) none was properly notarized; (3) the officers refused to present the warrants' affidavits to Slayton; (4) the warrant for Slayton's car was inadequate because one paragraph describes an automobile as the place to be searched, while a later paragraph names a residence; (5) the warrants were based upon hearsay information provided by unreliable informants; and (6) all of the warrants were fraudulent because only Slayton and his mother knew the relevant facts.

Next, the complaint asserts that the defendants invaded Slayton's privacy by questioning, without probable cause, a friend of his about Slayton's sexual orientation. Finally, the complaint claims that the preceding allegations amount to a conspiracy by the defendants. Attached to the complaint are copies of affidavits for the search warrants the defendants obtained.

The defendants, claiming qualified immunity, moved to dismiss, alleging that copies of the search warrants show that all affidavits were properly signed and complete, that officers executing a search warrant are not required to provide copies of supporting affidavits to a suspect, and that Slayton's complaint is frivolous and malicious. The district court refused to rule on the motion to dismiss, instead ordering Slayton to replead with detail and specificity under the heightened requirements of Elliott v. Perez, 751 F.2d 1472 (5th Cir. 1985), and Rodriquez v. Avita, 871 F.2d 552 (5th Cir.), cert. denied, 493 U.S. 854 (1989).

Slayton amended his original complaint to insert additional facts. First, he stated that the fact that the searches turned up no contraband is important. Next, he asserted that no informant existed to provide information leading to the issuing a warrant. He also said that the third page of each warrant was added after the searches took place, proving that they were "fraudulently produced."

Other facts Slayton added included that he was not convicted of any offense related to the warrants, that the defendants took and did not return some of Slayton's photographs, and that Slayton had personal knowledge of the events that he can corroborate with testimony of "certain potential witnesses." The amended complaint concluded that the searches amounted to an illegal invasion of Slayton's privacy. Finding that Slayton's amended complaint did not meet the heightened pleading standards, the court dismissed with prejudice.

II.

Although section 1983 does not expressly provide for an immunity defense, courts consistently have held that government officials deserve some immunity from suits to enable them to perform their duties without undue obstruction. In Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982), the Court held that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional

rights of which a reasonable person would have known." (Citation and footnote omitted.) The Court has declared that the "contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987) (citation omitted).

Police officers are entitled to qualified immunity in appropriate circumstances. Malley v. Briggs, 475 U.S. 335, 340 (1986). This immunity will protect all officers except those who are plainly incompetent or knowingly violate clearly established law. Id. at 341. When a plaintiff brings a claim under section 1983, and a defendant officer counters with an assertion of immunity, we consistently have held that the plaintiff must plead specific facts to overcome the immunity defense. See Geter v. Fortenberry, 849 F.2d 1550, 1553, 1559 (5th Cir. 1988).

We first elaborated the heightened pleading requirement in Elliott v. Perez, 751 F.2d 1472 (5th Cir. 1985), stating that when a government official raises the defense of immunity from suit,

> the district court should on its own require of the plaintiff a detailed complaint alleging with particularity all material facts on which he contends he will establish his right to recovery, which will include detailed facts supporting the contention that the plea of immunity cannot be sustained.

Id. at 1482. Although Elliott involved an immunity defense by a judge and a prosecutor, we consistently have applied the heightened pleading standards to suits against other government officials, including police officers. See Geter, 849 F.2d at 1559; Brown v. Glossip, 878 F.2d 871, 874 (5th Cir. 1989); James v. Sadler, 909 F.2d 834, 838 (5th Cir. 1990).

In the case at bar, the district court, not satisfied with the level of specificity in Slayton's original complaint, ordered him to amend to state his claim with particularity. Finding the amended complaint vague and full of unacceptable "conclusory allegations," the court dismissed the complaint. In Brown, 878 F.2d at 874, we held that a plaintiff must plead facts sufficient to overcome the immunity defense at the earliest stage of litigation in order to allow a court to free defendant officers not only from liability but also from all by-products of a suit.

In Streetman v. Jordan, 918 F.2d 555 (5th Cir. 1990), we confronted a situation similar to the one before us. The plaintiff brought a section 1983 action against city and county police officers, alleging they were not entitled to qualified immunity because they made him lie naked on the floor of his home while they searched, unsuccessfully, for cocaine pursuant to a warrant. Id. at 556. We held that while the plaintiff's pleadings contained quite a bit of factual detail about the officers' behavior during the search, they did not meet the heightened Elliott pleading requirements, as facts supporting "actionable claims" were absent. Id. at 557. In particular, we noted that the plaintiff alleged that the officers relied upon a fictitious confidential informant, but we concluded that this "bold assertion" that the informant did not exist was insufficient to support an actionable claim. Id. We also rejected, as inadequate to overcome the immunity defense, bare allegations that a conspiracy existed to deprive the plaintiff of his rights. Id.

In Bennett v. City of Grand Prairie, Tex., 883 F.2d 400, 408 (5th Cir. 1989), we discussed specifically what a plaintiff suing police officers for an arrest without probable cause must allege. We concluded that the plaintiff must prove that the "officers he has sued acted in an `objectively unreasonable' manner." Id. (citation omitted). We cited Malley v. Briggs, 475 U.S. 335, 341 (1986), to show that police officers will forfeit immunity only if the warrant they relied upon in making an arrest is "`so lacking in indicia of probable cause as to render official belief in its existence unreasonable' . . . ." Id. See also James, 909 F.2d at 838. We found that the officers at issue acted reasonably in relying upon a warrant based upon hearsay information that contained an adequate description of wrongdoing, and therefore they retained their immunity from suit.

III.

Applying the previous discussion to Slayton's complaint, we agree with the district court that his allegations are not specific enough to defeat the individual officers' immunity defense. For example, Slayton first complains that the arrest warrant the officers produced when they arrived at his mother's house on June 26, 1986, was based upon "false, hearsay information coerced" from juveniles. The complaint explains neither why the information was false nor how it was coerced. This part of Slayton's complaint concludes that the "interrogations" conducted by the officers were "slanderous" and "an invasion of his privacy." Once more, these

legal conclusions are not sustained by even a modicum of factual muscle.

Next, Slayton's complaint attacks the sufficiency of the warrants the officers produced to search Slayton's car and mobile home. None of the six elements of his attack suffices to remove the cloak of immunity from the officers.

First, a quick glance at official copies of the affidavits show them to be signed and notarized. Second, officers are not required to produce affidavits. Third, a minor discrepancy in description of the location to be searched)) far from apparent in the affidavit)) cannot constitute a breach of good faith in a belief of probable cause by police officers. Next, officers may indeed rely upon hearsay information in filing for a warrant, especially when they aver that the informant providing the hearsay information has previously provided reliable evidence. Bennett, 883 F.2d at 408. Last, Slayton's allegation that the warrants were fraudulent because only his mother and he knew the relevant information is a conclusion that he is empirically incapable of making.

Clayton goes on to complain that the officers' questioning a friend of Slayton's constituted a conspiracy. Once more, such a bold assertion of a conspiracy, without specific facts that would show the elements of a conspiracy, does not satisfy the heightened pleading standards. Streetman, 918 F.2d at 557.

Nothing in Slayton's amended complaint rises to the level of presenting an actionable claim. Again, the "facts" he produces))

including that no contraband was found, that no informant existed, that a signature was added to the warrants, and that Slayton can produce corroborating witnesses)) are all either further assertions or not supported by the evidence. We cannot allow a plaintiff to defeat officers' immunity by creating assertions without also providing facts to support them.

For instance, Slayton's claim that he can produce witnesses to confirm his account is nowhere supported by crucial factual information, such as the names of these witnesses or the content and basis of their testimony. Nor is his claim that a signature page was added to the warrants backed up by any convincing detail of how this addition occurred. Finally, his assertion that no contraband was found is plainly contradicted by evidence showing that the police confiscated about fifty photographs from Slayton's possession, involving children engaged in sexual activity, the crime for which Slayton initially was arrested.

For Slayton to have met the pleading requirements, he would have had to have articulated a set of facts that showed that the police officers did not act in good faith in arresting Slayton and searching his property. The conclusionary allegations that comprise the complaint are insufficient.

Specifically, the complaint gives us no reason to believe that the officers intentionally relied upon warrants lacking probable cause. In fact, a look at the warrants shows that the police were searching for specific contraband (amphetamines, marihuana, and child pornography), at a specific location (a light brown mobile

home, serial number 0670, located on a county road one-fourth mile north of Highway 901 in Gordonville, Texas), based upon information from a confidential informant who previously had provided correct information. Slayton does not plead facts to show that the officers relied upon a warrant so lacking in probable cause to make their reliance unreasonable. The defendants do not lose their immunity by a plaintiff's mere speculation and conclusionary allegations.

IV.

On a final note, we also find Slayton's allegation against the City of Sherman, in his amended complaint, that "the fact that more than one of their agents was involved in the misconduct gives rise to the inference of an official policy of permitting such conduct," not to meet the pleading standards we require. In Monell v. Dep't of Social Services, 436 U.S. 658, 691 (1978), the Court held that a city may be liable under section 1983 only where the officials' actions are "pursuant to official municipal policy." In Bennett, 883 F.2d at 410, we held that a plaintiff claiming he was falsely arrested under municipal policy must set out "specific facts" showing intentional indifference "toward training officers" or that inadequate training directly led to the false arrest. Slayton never provides a single fact showing the City of Sherman to be indifferent to the training of its officers. The district court correctly dismissed this part of Slayton's claim as well.

The judgment of dismissal is AFFIRMED.