

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 91-6179
Summary Calendar

STEWART L. JONES,

Plaintiff-Appellant,

VERSUS

TEXAS SOUTHERN UNIVERSITY'S BOARD OF REGENTS, ET AL,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
CA H 88 1622

May 19, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

A former Texas Southern University law student, proceeding pro se, sued members of the faculty, staff, and administration alleging civil rights, due process, and equal protection violations, and related claims under 20 U.S.C. § 1232(g) and state tort law, contending primarily that his grades had been tampered with and his redress requests improperly handled. The district court dismissed some of his claims on a motion to dismiss, some on a motion for directed verdict, and the remainder were decided against Appellant

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

by a jury. He appeals. Finding that all issues raised are left to the discretion of the district court and that this discretion has not been abused, we affirm.

The district court granted Defendants' motion to dismiss on the basis of Eleventh Amendment immunity as to the claims against Defendants in their official capacities, and on the basis of qualified immunity in their individual capacities. First, Jones claims that Defendants' motion was untimely because it was filed after the district court's deadline for the filing of dispositive motions had passed. The district court has broad discretion in such matters. Edwards v. Cass County, Texas, 919 F.2d 273, 275 (5th Cir. 1990). Appellant points to no prejudice flowing from the court's decision to consider the late-filed motions and none is apparent on the record. The district court did not abuse its discretion.

Appellant also claims that the motion was untimely under Rule 12(b) which requires the filing by Defendant before answer. However, Rule 12(c) allows a motion for judgment on the pleadings to be filed only after answer is filed, and such motion may be based on the failure of the Plaintiff's pleadings to state a claim on which relief may be granted. See Nunley v. M/V Dauntless Colocotronis, 696 F.2d 1141, 1143, cert. denied, 105 S.Ct. 120 (5th Cir. 1983). We, therefore, construe the grant of the Motion to Dismiss for failure to state a claim as a grant of judgment on the pleadings, and, as such, it is timely. See St. Paul Ramsey County Medical Center v. Pennington County, South Dakota, 857 F.2d 1185,

1187 (8th Cir. 1988); 5 Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure, § 1367 (2nd Ed. 1990).

The district court granted Defendants' motion based on qualified immunity only as to Appellant's procedural due process, equal protection, and civil rights conspiracy claims. It did so on the basis that Appellant failed to allege a violation of a federal right. Appellant contends this was error.

The district court eventually submitted the equal protection claim to the jury so, if it was error to dismiss it previously, that error was harmless. Assuming without deciding that Appellant had a protected interest, he had an adequate post-deprivation remedy under Texas law. See e.g., Eiland v. Wolf, 764 S.W.2d 827, 832-36 (Tex. Ct. Civ. App. 1989). Thus there is no federal equal rights violation. Hudson v. Palmer, 468 U.S. 517, 533 (1984). A claim for civil rights conspiracy must be based on an allegation of racial or other invidious discrimination. Griffin v. Breckenridge, 403 U.S. 88, 102 (1971). Jones made no such allegation.

Appellant also complains that the district court erred in granting Defendants thirty additional days in which to file a motion for summary judgment. If this was error, it was harmless, because the Defendants missed the extended deadline and the district court denied their later filed motion to file the same pleading.

Next Jones contends that the district court erred in not permitting him to reassert in his amended complaint previously plead issues which had been dismissed. Because these issues are

frivolous any possible error is harmless.

Appellant moved the district court to sanction Defendants for failure to respond to certain discovery orders by entry of default judgment against them, and otherwise. We shall not here recount the arduous discovery battle waged by the parties, nor the district court's painstaking effort to obtain compliance with its orders. Suffice it to say that, in our view, the Defendants were hardly forthcoming, Appellant's requests were oft times unreasonable, and the district court displayed incredible patience. "The district court has broad discretion in discovery matters and its rulings will be reversed only on an abuse of that discretion." Scott v. Monsanto Co., 868 F.2d 786 (5th Cir. 1989). We see no abuse of discretion here. In addition, Appellant has not shown that he was prejudiced by the Defendant's failure. Those original documents which the defense could not produce were replaced by apparently reliable photocopies. Sheets v. Yamaha, 891 F.2d 533 (5th Cir. 1990).

The district court denied certain challenges for cause Appellant made to some prospective jurors. These matters are again in the broad discretion of the district court. United States v. Hinojosa, 958 F.2d 624, 631 (5th Cir. 1992). We find no abuse of that discretion. The district court specifically questioned the challenged jurors thoroughly on the subject of Appellant's challenges and their responses show clearly that there was no sound basis for challenge.

In its effort to appropriately manage this seemingly

unmanageable litigation, the district court allotted thirty-six hours for the trial, eighteen trial hours to each side. Appellant contends that this was error but he does not show how this limit was unreasonable. To the contrary, our review of the record shows that the time allotted was not only reasonable but generous and well within the district court's discretion. Topalian v. Ehrman, 954 F.2d 1125, 1139 (5th Cir.), cert. denied, 113 S.Ct. 82 (1992).

We find Appellant's contention that Defendant's answers to his request for admissions are inconsistent with the testimony of Defendant Carrington to be meritless. The answers are not inconsistent. Nor was the district court in error in denying Appellant's motion for directed verdict because Defendants did not retain the originals of his examination papers. 20 U.S.C. § 1232(g) imposes no such requirement on Defendants.

Finally Appellant's claim that the district court erred in granting a partial directed verdict on the issue of damages was rendered moot by the jury verdict finding that the Defendants had no liability to Appellant.

Numerous other issues are raised in Appellant's brief but are inadequately briefed for meaningful review. See Brinkman v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987).

AFFIRMED.