UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Nos. 92-2177 & 92-2719
Summary Calendar

CARL STEPHEN THOMAS,

Plaintiff-Appellant,

versus

J.W. HUMFIELD, ET AL.,

Defendants,

GEORGE HESS, CHESTER B. BENGE, JR.,
RICHARD L. VAN HORN and ROBIN N. DOWNES,

Defendants-Appellees.

Appeals from the United States District Court for the
Southern District of Texas
(CA-H-86-902)

(August 2, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.[*]

GARWOOD, Circuit Judge:

Plaintiff-appellant Carl S. Thomas (Thomas) brought this civil rights action, *pro se*, against the defendants-appellees, thirty-six

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

employees and officials of the University of Houston. The district court dismissed thirty-two of the defendants for insufficient service of process (Unserved Defendants). After the case had been transferred to relieve an overcrowded docket, the second district court entered a *sua sponte* order granting summary judgment on the merits for the remaining four defendants (Served Defendants). Thomas now appeals the dismissal for failure to serve process and the grant of summary judgment. In both instances, we affirm.

Facts and Proceedings Below

Thomas received a law degree from the Boalt Hall School of Law of the University of California at Berkeley (Berkeley) in 1981. While at Berkeley, Thomas, who is black, became embroiled in disputes with his fellow students and with the law school faculty. Believing his numerous interpersonal conflicts were the result of racial and religious discrimination, Thomas filed a civil rights suit against several Berkeley law professors and the university regents. Upon graduation, Thomas applied for admittance to the Texas state bar but was denied a license after the Texas Board of Law Examiners (the Board) found him mentally unstable and unfit to practice law. Thomas sued various Texas parties for this denial. As with the Berkeley suit, Thomas alleged the Board's determination was the result of racial and religious discrimination. *See Thomas v. Kadish*, 748 F.2d 276 (1984). Unable to practice law, Thomas entered the graduate school of economics at the University of HoustonSQUniversity Park (UH) in the fall of 1981.

Entering UH did not end Thomas's difficulties. He alleges that as a student he was harassed by the campus police and other

university personnel because of his race and because he exercises his constitutional rights to free speech, association, and religion. Thomas is a fervent Christian and believes himself to be called by God to minister to the Asian population. Following his call, he began accosting Asian women in the UH library and elsewhere on campus in an attempt to convert them to Christianity. While ostensibly attempting to minister to Asian women, Thomas provoked numerous complaints, many of which led to encounters with police and other university officials. Several of these encounters resulted in Thomas's arrest, including one arrest for indecently exposing himself to a woman in the library. After a deluge of complaints by Asian women, UH banned Thomas from the school libraries.

On March 4, 1986, Thomas brought the present suit under 42 U.S.C. §§ 1981, 1983, 1985 and 1986 claiming that these encounters were the product of exaggerated or manufactured allegations by university personnel. *See Thomas v. Humfield*, 916 F.2d 1032, 1033 (5th Cir. 1990). In particular, Thomas alleged that the UH police have instituted a policy of racial segregation and religious discrimination by preventing Asian women from interacting with black men and by forcing the women to accept Asian or white male escorts in order to interfere with his ministry. Thomas also charged UH with racial discrimination for allegedly lowering the grades of black students in science and math classes, classes in which Thomas appears to have done poorly, and for funnelling black students to the downtown campus while most white and Asian students attend the suburban campuses.

Thomas initially served proper process on four of the defendants: UH Vice-Chancellor for Administration Richard Van Horn (Van Horn), Chief of Campus Security George Hess (Hess), UH Board of Regents Chairperson Chester B. Benge, Jr. (Benge), and UH Library Director Robin N. Downes (Downes). The Served Defendants filed motions requesting that Thomas undergo a psychiatric examination pursuant to Federal Rule of Civil Procedure 32(a), and the court ordered Thomas to be tested. On October 23, 1986, the court found Thomas incompetent to continue his suit and appointed a *guardian ad litem* on November 17, 1986. Two years later, the guardian improperly attempted to serve Thomas's original complaint on twenty-two of the Unserved Defendants. Thereafter, the Unserved Defendants moved to dismiss for failure to serve proper process, and the four Served Defendants filed motions to dismiss for failure to state a claim. The district court granted both sets of motions, and the case was dismissed. In November 1990, this Court reversed the district court's judgment and remanded the case because Thomas's guardianship proceedings failed to satisfy due process. *Thomas v. Humfield*, 916 F.2d 1032, 1035 (5th Cir. 1990).

Upon remand on September 4, 1991, the district court again dismissed the complaint against the thirty-two Unserved Defendants for failure to serve process and ordered Thomas to file a detailed statement of particulars specifying his causes of action against the remaining four defendants. In response, Thomas submitted a "More Definite Statement" on October 4, 1991, which incorporated his original complaint but made no factual allegations of any involvement by the four defendants. Although Thomas admitted that

none of the remaining defendants were directly involved in a single incident alleged, he maintained that they were nevertheless responsible because of their "toleration, condonation or encouragement of the injurious conduct of their subordinates," their "failure to supervise, train or correct the subordinates," their "creation of the policy or custom under which the injurious conduct occurred," and their "deliberate indifference to or evasion of the problem of the injurious behavior complained of that has persisted over time."

The district court announced that it would consider granting summary judgment for the defendants based in part on UH's immunity to suit under the Eleventh Amendment and gave the parties thirty days to prepare their responses. Thomas asserted that the Eleventh Amendment was inapplicable because he had not joined UH as a defendant. He also opposed having to present summary judgment evidence before the completion of discovery. As summary judgment evidence, he produced several pieces of correspondence with the university officials, memoranda between the officials, newspaper articles, and the notice barring him from the campus libraries. The defendants responded by filing motions to dismiss or for summary judgment.

On August 19, 1992, the district court found the Eleventh Amendment barred Thomas's damages claim against the Served Defendants in their official capacity. The court also found that Thomas could not maintain his action against the defendants in their individual capacities because he had failed (1) to state particular facts indicating their involvement in any injurious

conduct or (2) to plead facts sufficient to overcome their assertion of qualified immunity. Accordingly, the court granted summary judgment in favor of the defendants, and Thomas brought this appeal.[1]

Discussion

This Court recognizes that we ordinarily give considerable deference in construing the allegations of a *pro se* complaint. *Haines v. Kerner*, 92 S.Ct. 594, 596 (1972); *Wesson v. Oglesby*, 910 F.2d 278, 281 (5th Cir. 1990). Thomas, however, is no ordinary *pro se* litigant. While he is not a licensed attorney, he has completed the academic requirements for a law degree and has previously conducted a successful *pro se* appeal before this Court. *See Thomas v. Humfield*, 916 F.2d 1032 (5th Cir. 1990). With his formal legal training, Thomas should be expected to understand and to observe court procedures that we might otherwise be willing to excuse if neglected by typical *pro se* claimants. Yet, even ignoring his advantageous academic background, we would still find no merit to his arguments.

I. Dismissal for the Unserved Defendants

Thomas argues that the dismissal of his complaint against the thirty-two Unserved Defendants was improper because the statute of limitations had not run and because the appointment of the guardian rendered him unable to serve the defendants. These contentions are

[1] The district court denied Thomas's motion for relief under Federal Rule of Civil Procedure 59(e) but granted his motion to consolidate his appeal of the grant of summary judgment with his appeal of the dismissal of his complaint against the Unserved Defendants.

patently meritless and require little consideration. Federal Rule of Civil Procedure 4(j) clearly provides:

> "If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion."

Thus, the running or tolling of the limitations period bears no relevance to the issue of timely service.

Neither did the guardianship proceedings interfere with Thomas's ability to serve process. Thomas filed his original complaint on March 4, 1986; thus, the 120-day period for serving process expired in early July of 1986. While the district court ordered Thomas to undergo psychiatric evaluation on June 13, 1986, the court did not find him incompetent until October 23, 1986, and did not appoint a guardian until November 17, 1986. The court's order on psychiatric examination contained no prohibition on serving process, and the other two orders were issued after the expiration of the 120-day period. Throughout the guardianship proceedings, Thomas maintained, and the court eventually found, that he was competent to conduct his own legal affairs. Thus, the subsequent appointment of a *guardian ad litem* does not excuse Thomas's failure to serve the defendants in a timely manner.

The district court also properly found that Thomas did not show good cause why he failed to serve the defendants. Thomas claimed his strategy was to serve only the four defendants whose whereabouts he knew, obtain the addresses of the other thirty-two defendants through discovery, and then serve them as well. At his

hearing on the motion to dismiss, however, Thomas admitted that at no time between the filing of his complaint and the appointment of the guardian did he serve the four defendants with interrogatories seeking the addresses of the remaining thirty-two defendants, nor did he even attempt to locate the unknown addresses in the telephone directory. Because Thomas proffered no evidence of a diligent effort to obtain service on any of these individuals, the district court properly dismissed his complaint.

II. Summary Judgment for the Served Defendants

Thomas also contends that the district court erred by granting summary judgment for the four Served Defendants. As a threshold matter, we note that district courts clearly have the authority to grant summary judgment *sua sponte* upon proper notice to all parties, *Arkwright-Boston Mfrs. Mut. Ins. Co. v. Aries Marine Corp.*, 932 F.2d 442, 445 (5th Cir. 1991), and the court need not give *pro se* litigants any more particularized warnings than ordinary parties. *Martin v. Harrison County Jail*, 975 F.2d 192, 193 (5th Cir. 1992). Given that the court first instructed Thomas to provide a more specific factual basis for his claims in September 1991, thirty days notice seems more than adequate for Thomas to fend off summary judgment.

This Court reviews a grant of summary judgment *de novo*. *Hanks v. Transcontinental Gas Line Corp.*, 953 F. 2d 996, 997 (5th Cir. 1992). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled

to a judgment as a matter of law." FED.R.CIV.P. 56(c). To present a genuine issue for the jury, the nonmovant must set forth specific facts in support of all allegations essential to his claim. *Celotex Corp. v. Catrett*, 106 S.Ct. 2548, 2554 (1986); *Hanks*, 953 F.2d at 997. Although we review all facts and reasonable inferences in the light most favorable to the nonmovant, bare allegations of a factual dispute are insufficient to avoid summary judgment. *Anderson v. Liberty Lobby, Inc.*, 106 S.Ct. 2505 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id*. at 2510.

A. Official Capacity

The district court properly disposed of Thomas's claims for money damages against the Served Defendants in their official capacity. The Eleventh Amendment to the United States Constitution serves as a jurisdictional bar for such suits against a state unless the state has waived its immunity.[2] Thomas mistakenly asserts that he has "set the sovereign immunities issue at rest" by "carefully not . . . join[ing] 'the University of Houston' as a

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[2] The Eleventh Amendment provides:

> "The judicial power of the United States shall not be construed to extend to any law suit in law or equity, commenced or prosecuted against one of the united States by Citizens of another States, or by Citizens or subjects of any Foreign State." U.S. CONST. AMEND. XI.

Despite its language, the Eleventh Amendment constitutes a jurisdictional bar to suits seeking monetary damages against a state by citizens of that state as well. *See Pennhurst State School and Hospital v. Halderman*, 104 S.Ct. 900 (1984).

party defendant."[3] On the contrary, he cannot evade the Eleventh Amendment "by suing state employees in their official capacity, since such an indirect pleading device remains in essence a claim upon the state treasury." *Stem v. Ahearn*, 908 F.2d 1, 3 (5th Cir. 1990), *cert. denied*, 111 S.Ct. 788 (1991). "It is irrelevant for purposes of eleventh amendment immunity that the action is framed against the state directly, or indirectly against subordinate agencies or officeholders operating in their official capacity." *Id*. at 4. Thus, each of the Served Defendants, Hess, Benge, Van Horn, and Downes, in their official capacity, are immune from suit for money damages.

B. Individual Capacity and Equitable Relief

Finally, the district court did not err in its summary judgment disposing of Thomas's claims against the four defendants in their individual capacity or his claims for equitable and injunctive relief. As this Court has often ruled:

> "Mere conclusory allegations are not competent summary judgment evidence, and they are therefore insufficient to defeat or support a motion for summary judgment. Nor may non-movants rest upon mere allegations made in their

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[3] There seems to be no doubt, and Thomas does not even contest, that the University of Houston is an agency of the State of Texas and is thereby protected by the Eleventh Amendment. *See LeCompte v. University of Houston System*, 535 F.Supp. 317, 320 (S.D. Tex. 1982) ("any judgment against the University of Houston System, or against its board of trustees or its officers for actions done within the scope of their duties would be paid out of the state treasury"); TEX. EDUC. CODE ANN. § 111, *et seq.* (Vernon 1972); *cf.*, *Laxey v. Louisiana Board of Trustees*, ___ F.3d ___, 1994 WL 213390 at *2 (5th Cir. June 13, 1994) ("Public universities may qualify for immunity [under the Eleventh Amendment] depending upon 'their status under state law and their relationship to state government.'" (quoting *Lewis v. Midwestern State Univ.*, 836 F.2d 197, 198 (5th Cir.), *cert. denied*, 109 S.Ct. 129 (1988))).

> pleadings without setting forth specific facts establishing a genuine issue worthy of trial." *Topalian v. Ehrman*, 954 F.2d 1125, 1131 (5th Cir.), *cert. denied*, 113 S.Ct. 82 (1992).

A civil rights claimant to prevent an adverse summary judgment must specifically identify each defendant's personal involvement in the alleged wrongdoing. *Thompson v. Steele*, 709 F.2d 381, 382 (5th Cir.), *cert. denied*, 104 S.Ct. 248 (1983) ("Personal involvement is an essential element of a civil rights cause of action."); *see Murphy v. Kellar*, 950 F.2d 290, 292 (5th Cir. 1992) (noting that, after being given the opportunity for discovery, "a plaintiff bringing a section 1983 action must specify the personal involvement of each defendant"). This requirement mandates that "supervisory officials cannot be sued under a theory of pure vicarious liability or respondeat superior under § 1983." *Reimer v. Smith*, 663 F.2d 1316, 1323 (5th Cir. 1981); *see Collins v. City of Harker Heights*, 112 S.Ct. 1061, 1066 (1992); *Johnson v. Moore*, 958 F.2d 92, 93 (5th Cir. 1992). "Certainly § 1983 does not give a cause of action based on the conduct of subordinates." *Thompson*, 709 F.2d at 382 *(citing Monell v. New York Department of Social Services*, 436 U.S. 658, 693, 98 S.Ct. 2018, 2037 (1978)). Therefore, to present a triable issue Thomas must come forward with summary judgment evidence indicating how in particular the remaining defendants were personally involved in the deprivation of his rights.

Because Thomas clearly has not done so, summary judgment will be affirmed. Indeed, he has wholly failed to specify with any degree of factual particularity the basis for his claims against

Hess, Benge, Van Horn, or Downes, even after having been ordered to do so by the district court. Although he alleges at least nineteen separate, specific incidents of harassment by university personnel, he admits that none of the Served Defendants participated in a single one of the alleged incidents. Thomas also makes numerous general claims of mistreatment and discrimination but makes no attempt to tie his vague allegations with any of the four defendants beyond the obvious fact that they held positions of authority at the university. Thomas merely generally claims that the defendants (1) "tolerat[ed], condon[ed] or encourage[d] . . . the injurious conduct of their subordinates," (2) had "knowledge of the injurious conduct of their subordinates and fail[ed] to supervise, train or correct the subordinates," (3) "creat[ed] . . . the policy or custom under which the injurious conduct occurred," or (4) were "deliberate[ly] indifferen[t] to or evas[ive] of the problem of the injurious behavior complained of that has persisted over time."

To demonstrate the defendants' involvement, Thomas offers nothing more than a single meeting with Downes, several letters he sent Hess and Van Horn, and various memoranda circulated among the defendants and other university officials. Regarding his meeting with Downes, Thomas alleges only that he complained to the library director in June 1985 about harassment by library employees and that Downes rejected his complaint. Similarly, none of the letters or the memoranda indicate any action on the defendants' part beyond reviewing complaints made either by or about Thomas. As a matter of law, this paltry evidence is insufficient to support a finding

that the defendants directed, condoned, encouraged, or were deliberately indifferent towards any of the constitutional injuries Thomas alleges.

Regarding his third allegation, Thomas can hold the defendants liable without showing their personal involvement in the actual confrontations if he can demonstrate they took some action to create or implement the discriminatory policy giving rise to the constitutional infraction. Thomas does allege that the campus security force maintained a policy of forcing Asian women to accept male escorts against their will and that the university enforced a system of racial segregation by channelling students of different races to different campuses. Thomas does not, however, provide competent summary judgment evidence sufficient to raise a fact issue that Hess, Benge, Van Horn, or Downes formulated or implemented any such policy of racial discrimination, segregation, or harassment. Thus, this claim, too, must fail.

Conclusion

Accordingly, both the original order dismissing the thirty-two Unserved Defendants for insufficient service of process and the subsequent order granting summary judgment in favor of the remaining four Served Defendants are

AFFIRMED.