IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5282
(Summary Calendar)

BOBBY G. GRAY,

Plaintiff-Appellant,

versus

CITY OF SHREVEPORT,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana

(92-CV-533)

(September 1, 1993)

Before JOLLY, WIENER and E. M. GARZA, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Bobby G. Gray, a City of Shreveport (Louisiana) police officer, sued his employer (the City) and others for violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

seq. (FCRA) in connection with a urinalysis drug test. The district court granted the City's motion to dismiss under Fed. R. Civ. P. 12(b)(6) for Gray's failure to state a claim upon which relief could be granted. Agreeing with the district court, we affirm.

I

FACTS AND PROCEEDINGS

Gray was required to submit a urine specimen for laboratory analysis after he was involved in a minor automobile accident while on duty. When Gray tested positive for the active ingredient in marihuana, he was fired. Gray filed the instant suit seeking damages for alleged violation of the FCRA. In addition to the City, Gray named the company that performed the urinalysis, SmithKline Beecham Clinical Laboratories, Inc. (SKB) as a FCRA defendant, and asserted pendent state-law claims against Willis-Knighton Medical Center (WKMC) whose laboratory collected the specimen.

The City filed a Fed. R. Civ. P. 12(b)(6) motion to dismiss for Gray's failure to state a cause of action under the FCRA, and for the absence of any other basis of federal jurisdiction. The district court elected to delay taking action on the City's motion until we decided Hodge v. Texaco, 975 F.2d 1093 (5th Cir. 1992). After we issued our Hodge opinion, the district court relied on it in concluding that Gray had failed to state a claim for which relief could be granted under the FCRA. Accordingly, the district court dismissed Gray's FCRA claims with prejudice, and his pendent

claims without prejudice. Gray timely appealed the orders of the district court.

II

ANALYSIS

The FCRA requires that agencies which provide certain consumer reports must ensure that such reports are correct and that they are not disclosed for unauthorized purposes. 15 U.S.C. § 1681. Consumer reporting agencies and users of consumer reports are liable for civil damages if they willfully or negligently fail to comply with the FCRA. 15 U.S.C. §§ 1681n and 1681o.

Gray alleged that WKMC and SKB had failed to follow proper procedures in collecting, handling, and testing his urine specimen, and that the City had wrongfully terminated his employment based on the positive test results. He also alleged that workplace drug test results constitute a "consumer report" within the meaning of § 1681a(d), and that federal jurisdiction existed under the FCRA because Gray was a "consumer," SKB was a "consumer reporting agency," and the City was a "user" of a consumer report. See 15 U.S.C. §§ 1681a(c) and (f), and § 1681(m).

We were required in Hodge to determine, under very similar circumstances, whether the result of a workplace drug test was a "consumer report" as defined in the FCRA. Hodge, 975 F.2d at 1094-95. Hodge, like Gray, was required by his employer to provide a urine sample that was collected by a medical service firm and sent to an unrelated laboratory for testing. Id. at 1094. After his employer terminated him because his urine tested positive for

marihuana, Hodge filed suit under the FCRA alleging, inter alia, that the laboratory which performed the drug tests was a consumer reporting agency, and that the drug test results were consumer reports covered by the FCRA. Id. at 1095.

We concluded in Hodge that, even though the FCRA does not categorically exclude the results of workplace drug tests from its coverage, Hodge's test results fell within the "transactions and experiences" exclusion from the FCRA. Under that exclusion, a report is not a consumer report within the meaning of the FCRA if it contains "information solely as to transactions or experiences between the consumer and the person making the report." 15 U.S.C. § 1681a(d)(A); see Hodge, 975 F.2d at 1096-97. We noted that the Federal Trade Commission's regulations interpreting the FCRA state that the transactions and experiences exception applies "as long as the report is not based on information from an outside source, but rather is based solely on the reporter's own first-hand investigations of the subject." Id. at 1096 (quotation and citation omitted). We rejected Hodge's argument that the exclusion did not apply because an intermediary, rather than the laboratory, had collected his urine sample. Id. at 1096-97. Characterizing the collection of the urine sample as "a mechanical preliminary task," we concluded that the laboratory's report of its analysis of Hodge's urine was not subject to the FCRA because it was a report of a "first-hand experience." Id.

In his appellate brief, Gray states conclusionally that the urine specimen delivered to SKB by WKMC was not his. Although

Gray's pleadings charged that the WKMC and SKB used an inadequate protocol to collect and handle his urine, he did not allege that SKB was liable under the FCRA because it had analyzed another person's urine sample instead of his own.

We may not look beyond the pleadings when we review the district court's dismissal of a complaint for failure to state a claim. Therefore, we need not consider whether the test results would be exempted as a report of a "first-hand experience" if, in fact, they were based on an analysis of a specimen not submitted by Gray. McCartney v. First City Bank, 970 F.2d 45, 47 (5th Cir. 1992); see also Smith v. First Nat. Bank of Atlanta, 837 F.2d 1575, 1578 (11th Cir.), cert. denied, 488 U.S. 821 (1988) (error in identity of consumer, if unknown to the consumer reporting agency, does not affect reporting agency's exclusion under the FCRA).

Hodge controls the disposition of this case. The district court did not err when it dismissed Gray's FCRA claims because he has not stated a cause of action under that statute. The dismissal of his pendent claims was proper because he failed to allege any basis for federal jurisdiction other than the FCRA. See Strain v. Harrelson Rubber Co., 742 F.2d 888, 889 (5th Cir. 1984) (plaintiff has burden of pleading diversity jurisdiction); see also Reid v. Hughes, 578 F.2d 634, 637 (5th Cir. 1978) (a complaint must state the particular statute under which the action arises, and the body of the complaint must set forth facts showing that the case does in fact arise under federal law). As there is no independent basis for federal jurisdiction, the federal courts do not have

jurisdiction over Gray's pendent state claims. United Mine Workers v. Gibb, 383 U.S. 715, 726, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966). Therefore, the district court's dismissals are

AFFIRMED.