IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5686
Summary Calendar

SALAR AKHTAR AZIZ,

Plaintiff-Appellant,

VERSUS

UVALDE COUNTY HOSPITAL AUTHORITY
d/b/a Uvalde Memorial Hospital, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
SA 90 CA 311

(March 25, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

The plaintiff, Salar Aziz, appeals a summary judgment entered against him and in favor of the various defendants. Finding no reversible error, we affirm for essentially the same reasons assigned by the district court.

I.

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 Pursuant to that rule, the court has determined that this opinion should not be published.

Aziz is a medical doctor who was practicing medicine as a staff member of defendant Uvalde Memorial Hospital. This dispute centers on the hospital's medical peer review process and, specifically, on a peer review hearing that had been scheduled for April 23, 1990, before the board of the hospital to review the probationary status on which Aziz had been placed, following disciplinary actions taken against him as a result of questions raised concerning patient care rendered by Aziz or concerning his use of hospital facilities. A month before the hearing, Aziz filed the instant suit and sought to enjoin the hearing. When the district court denied the injunction, Aziz resigned his staff position; the peer review hearing, accordingly, never took place.

II.

Aziz's complaint asserts three federal claims and four pendent state law claims, as well as the request for injunctive relief. The defendants, who are the hospital and the eight medical doctors who practice medicine in Uvalde, Texas, raised various defenses, including special statutory defenses, limitations, qualified immunity, and qualified privilege.

Both sides engaged in extensive discovery. The defendants objected to certain discovery regarding the peer review process; the magistrate judge issued an order compelling that discovery, but the district court stayed the order, and that discovery matter has not been finally resolved. The defendants moved for summary judgment, which the district court granted.

III.

Most of Aziz's arguments on appeal are hard to discern. In the seven pages of argument in his appellate brief, Aziz does not differentiate or separate the arguments regarding his various claims or theories of recovery in such a way that those arguments can be readily understood. Thus, it is sometimes difficult, if not impossible, to identify what errors Aziz is assigning to the actions of the district court.

A.

Aziz first makes the general statement that 42 U.S.C. § 1983 prohibits the deprivation of life, liberty, or property. He does not indicate in what respect state action was involved in this case. He states that under the Texas Medical Practices Act, TEX. REV. CIV. STAT. ANN. art. 4495(b), "a physician is entitled to certain procedural due processes in the peer-review process." He does not explain what violations he alleges occurred here or what defects existed in the peer review process. Thus, he has failed to assign error to the actions of the district court in regard to the peer review process.

Even if he had, the district court appropriately held that, except for claims under the civil rights statutes, the Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11111(a)(1), provides absolute immunity from damages to any person acting as a member of a peer review body . (The statute also excepts violations of the antitrust statutes.) The district court also

noted that two state statutes provide such immunity except in cases of actual malice. *See* TEX. REV. CIV. STAT. ANN. art. 4495b, § 5.06(*l*)- (m) (Vernon Supp. 1992); TEX. HEALTH & SAFETY CODE ANN. § 161.033 (Vernon 1992).

B.

Aziz claims the district court improperly denied his claim of federal and state antitrust violations. As the district court held, however, while Aziz claims injury to himself, he has produced, for the summary judgment record, no evidence of "antitrust injury," i.e., damage to competition. Hence, he lacks "antitrust standing." *See Bell v. Dow Chem. Co.*, 847 F.2d 1179, 1182-84 (5th Cir. 1988). In other words, Aziz alleges injury to himself but has not shown that, even if, *arguendo*, he was injured, there was injury to *competition*. "The antitrust laws . . . were enacted for `the protection of *competition* not *competitors*, *Brown Shoe Co. v. United States*, 370 U.S. [294, 320 (1962)].'" *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977).

C.

Aziz argues that the district court did not allow him proper discovery. The discovery dispute involved only the peer review issue. As we have determined, Aziz has not assigned, on appeal, any particular error in the peer review process, in which he declined to participate by his resignation prior to the peer

review hearing. Nor does Aziz tell us what information he hoped to gain from the desired discovery or how that information could help him establish a claim.

D.

Aziz asserts that the district court erred in discarding his title VII claim. *See* 42 U.S.C. § 2000e *et seq.* As the district court correctly noted, however, physician staff privileges, as a matter of law, do not create an employer-employee relationship for the purpose of maintaining an action under title VII. *Diggs v. Harris Hosp.-Methodist, Inc.*, 847 F.2d 270, 272-74 (5th Cir.), *cert. denied*, 488 U.S. 956 (1988).

E.

Aziz charges that the district court failed to address his defamation claim. In his deposition, however, Aziz could provide no details of the alleged defamatory statement, such as whether the offending statements were oral or written or when or by whom they were made.

F.

Aziz claims tortious interference of a contract. But he admits that he had no contract with the hospital or his patients. This issue is without merit.

G.

Aziz's final pendent state claim is for alleged negligent and intentional infliction of emotional distress. No such cause of action has been recognized in Texas at this time. In *Boyles v. Kerr*, 1992 Tex. LEXIS 154 (Tex. Dec. 2, 1992), the court held that "there is no general duty in Texas not to negligently inflict emotional distress," *id.* at *3, even in the case of grossly negligent infliction, *id.* at *23-*24.

IV.

In summary, the district court properly concluded that Aziz is entitled to no relief on any of his far-ranging theories. The summary judgment, accordingly, is AFFIRMED.