

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1452

Summary Calendar

DAVID COURTNEY WEBB,

Plaintiff-Appellant,

v.

CAROLYN HAVINS, Taylor County Jail Nurse,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(1:92-CV-117-C)

(June 13, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

David Courtney Webb appeals the district court's judgment for the defendants following a bench trial of his civil rights suit brought pursuant to 42 U.S.C. § 1983. We affirm in part and vacate and remand in part the judgment of the district court.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

In September 1992, David Courtney Webb, formerly an inmate at the Taylor County Adult Detention Center (TCADC) in Abilene, Texas, filed a pro se civil rights suit pursuant to 42 U.S.C. § 1983 in the United States District Court for the Northern District of Texas. Webb named as defendants the TCADC; Julian Hernandez, the Sheriff in Abilene; Carolyn Havins, a nurse at the TCADC; and Gary Graham, the grievance officer at the TCADC. Webb, who sued the individual defendants in their official and individual capacities, alleged that these defendants had failed to treat his broken tooth for approximately four months and that Hernandez and Graham had violated his right of access to the courts.

The district court ordered Webb to amend his pleadings in accordance with Federal Rules of Civil Procedure 8(a)(2) and (3). In his amended complaint, Webb alleged that Havins, aided by Hernandez and Graham, had been deliberately indifferent to his serious medical needs*S*o*i.e.*, nothing was done about his broken tooth for four months. He also alleged that the Taylor County Commissioners Court (TCCC), as well as Havins, Hernandez, and Graham, had been deliberately indifferent to his serious medical needs*S*o*i.e.*, he needed for an eye examination because his glasses were out-of-date and he suffered from painful recurring headaches. Moreover, he alleged that Hernandez and the TCCC had violated his right of access to the courts (1) by denying him writing materials, postage, envelopes, staples, and notary

service, (2) by not ensuring that Webb had legal representation with respect to his instant § 1983 action, and (3) by not ensuring that Webb had legal representation or access to an adequate law library with respect to the appeal of his state court conviction. He also alleged that Hernandez and the TCCC violated his civil rights by forcing him to sleep on the floor for approximately one year in an overcrowded jail. Webb stated in his amended complaint that all of the individual defendants had acted in their official capacities in denying his rights, but he failed to state that they had acted in their individual capacities.

On December 2, 1992, the district court dismissed without prejudice as frivolous Webb's claim against the TCCC, Havins, Hernandez, and Graham concerning his needing an eye examination and suffering from headaches and his claim against the TCCC and Hernandez that proper arrangements had not been made to provide him with legal representation with respect to his instant § 1983 action. The district court then ordered the defendants served with the remaining claims.

The defendants filed their answer on January 15, 1993. On January 22, 1993, Webb filed an "amendment to complaint," alleging that Hernandez had acted in both his individual and official capacities in forcing Webb to live in an overcrowded jail. The district court, however, notified Webb that this "amendment" had been stricken from the record because Webb had not moved for leave to amend or supplement his complaint. On

February 1, 1993, Webb filed a request for clarification, stating that through his court-ordered amended complaint and the defendants' answer, he realized that "there [was] some confusion as to who [was] being sued and in what capacity." He also explained that he had intended to sue the individual defendants in both their individual and official capacities and that he would amend his complaint to clarify if necessary. On February 9, 1993, he filed a motion for leave to file an amended complaint and a proposed amended complaint, which indicated that he was suing the individual defendants in both their individual and official capacities. The district court denied his motion for leave on March 4, 1993.

On April 14, 1993, the day before trial was to begin, Webb filed a motion for an extension of time to complete discovery and a second motion for leave to amend his pleadings. The district court denied these motions. The case proceeded to trial on April 15, 1993. After hearing testimony, the district court concluded that because Webb had sued the individual defendants in their official capacities only, Webb had not proven a cause of action under § 1983 against these defendants because there was no evidence of a custom or policy which violated any of his constitutional rights. Webb now appeals.

II.

In his original complaint, Webb sued the individual defendants in both their official and individual capacities.

However, his first amended complaint, in which he sued them only in their official capacities, superseded his original complaint and rendered it of no legal effect. See Boelens v. Redman Homes, Inc., 759 F.2d 504, 508 (5th Cir. 1985) (an amended complaint ordinarily supersedes the original and renders it of no legal effect unless the amended complaint specifically refers to or adopts the earlier pleading). On appeal, he argues that the district court and the defendants had been put on notice that the defendants were being sued in both capacities, and thus suggests that the trial proceeded accordingly. He therefore contends that the district court erred in concluding that the defendants were sued in their official capacities only. Construing Webb's appellate brief liberally, we must read his argument as being that the district court erred in denying him leave to amend his first amended complaint for clarification.

This court reviews the district court's denial of leave to amend a complaint for an abuse of discretion. Ashe v. Corley, 992 F.2d 540, 542 (5th Cir. 1993). Leave to amend "shall be freely given when justice so requires." FED. R. CIV. P. 15(a). Although a pro se plaintiff "should be permitted to amend his pleadings when it is clear from his complaint that there is a potential ground for relief," Gallegos v. Louisiana Code of Crim. Proc. Art. 658 Paragraph A and C(4), 858 F.2d 1091, 1092 (5th Cir. 1988), leave to amend is "by no means automatic," Ashe, 992 F.2d at 542. In deciding whether leave should be granted, the district court can consider factors such as (1)

undue delay, bad faith, or dilatory motives on the part of the movant, (2) repeated failure to cure deficiencies by amendment previously allowed, (3) undue prejudice to the opposing party, and (4) futility of amendment. Id.

The district court did not give reasons for denying Webb's motion to amend. Such a failure is "unfortunate but not fatal to affirmance" if the reasons for denying leave are ample and obvious. Id. We thus consider the factors which could have served as the basis for the district court's denial of Webb's motion.

A. DILATORY MOTIVES, FAILURE TO CORRECT, UNDUE PREJUDICE

Webb filed a motion for clarification and for leave to amend shortly after the district court notified him that his "amendment to complaint" had been stricken for failure to file a motion for leave to amend. Thus, there is no evidence of dilatory motives on Webb's part. Further, Webb had filed only one amended complaint at the time he sought subsequent leave to amend; therefore, there were no repeated failures on Webb's part to cure the deficiency he saw in his complaint. Finally, because Webb filed his motion for leave to amend his complaint approximately three weeks after the defendants had filed their original answer, any risk of prejudice to the defendants in granting Webb's motion was slight.

B. FUTILITY

When futility is advanced as the reason for denying an amendment to a complaint, the district court has usually denied

leave to amend because the theory of recovery presented in the amendment lacks legal foundation or because the theory has been adequately presented in a prior version of the complaint. Jamieson v. Shaw, 772 F.2d 1205, 1208 (5th Cir. 1985). Webb's proposed amended complaint presents a different theory of recovery than what he had previously set forth*S*i.e., that the individual defendants were liable in their individual capacities. We thus must determine whether Webb's claims against the defendants in their individual capacities lacked legal foundation. Id. at 1209.

Although the district court found that Webb had presented no evidence of a custom or practice by the defendants which would have deprived him of appropriate medical attention, and thus that the defendants were not liable in their official capacities on Webb's medical claim, it is not clear whether the district court would have found that the defendants were individually liable on Webb's medical claim. Testimony at trial indicated that Havins refused to respond to Webb's request to see a dentist regarding his broken tooth for four months and that Hernandez and Graham refused to respond to his grievances concerning his medical needs during this time.¹ Testimony further indicated that Webb was

¹ We note that the record also indicates that the district court admitted into evidence a magistrate judge's findings in a previous lawsuit Webb had filed. Webb stated at trial that this suit involved essentially the same complaint that he had filed in the instant case but that it had been dismissed because he had sued Taylor County as the defendant. Further, he read into the record from the magistrate's findings at trial: "It would appear there is no doubt [Webb] had a serious medical need, and there would appear to be what could be termed a deliberate indifference

finally sent to a dentist the day the defendants received notice that he had filed the instant suit against them. Thus, with regard to Webb's medical claim against these defendants in their individual capacity, futility cannot be advanced as a valid reason for denying leave to amend.

Webb also alleged in his proposed amended complaint that Hernandez had denied him access to the courts by failing to give him writing materials, to make the necessary arrangements to provide him with legal representation, or to provide him with access to an adequate law library. The district court found that Webb was represented by an attorney concerning the state court conviction upon which he based his access-to-the-courts claim.² A criminal defendant who is represented by counsel has meaningful access to the courts. See Tarter v. Hury, 646 F.2d 1010, 1014 (5th Cir. Unit A 1981). Thus, the district court did not abuse its discretion in denying Webb's motion to amend his complaint

to treatment. Even granting time had to be taken before he went to the dentist, four months would seem to be an inordinate delay."

² At trial, Webb acknowledged that he was so represented. Webb also testified that he thought that because he could not reach his attorney by phone after some attempts and had sent a note saying "I want to appeal my conviction" to the court, jail personnel, such as Hernandez, were spontaneously required to provide him with another attorney--even though he made no request with them for one. Webb also could give no reason for not having written to his attorney and informing him that he wanted to appeal his conviction. Further, his explanation for having been denied access to a law library was merely that if there had been a law library at the TCADC while he had been there, as there now is, he could have handled his appeal himself when his attorney could not be reached.

with respect to his access-to-the-courts claim against Hernandez in his individual capacity.

In his proposed amended complaint, Webb further alleged that Hernandez had violated his civil rights by forcing him to live in an overcrowded jail cell, where he had to sleep on the floor. We note that Webb was incarcerated in the TCADC initially for a parole violation. While incarcerated, he was convicted of the offense that was the subject of his parole violation, and he remained confined in the TCADC until he could be transferred to the Texas Department of Corrections, Institutional Division. It is therefore unclear whether Webb's claim involving the overcrowded conditions of his confinement are to be analyzed under Eighth Amendment standards, which govern such claims made by convicted prisoners, or under Fourteenth Amendment standards, which govern such claims made by detainees. If the Eighth Amendment standard is applicable, Webb is required to establish that Hernandez placed him in confinement with a deliberate indifference to the conditions of that confinement. See Wilson v. Seiter, 111 S. Ct. 2321, 2326-27 (1991). "Deliberate indifference" is a legal conclusion which must rest on facts evincing wanton action on the part of the defendant. Walker v. Butler, 967 F.2d 176, 178 (5th Cir. 1992); see Whitley v. Albers, 475 U.S. 312, 319 (1986). If the Fourteenth Amendment standard is applicable, Webb is required to establish that the overcrowding amounted to punishment and was not incident to some

other legitimate governmental purpose. See Bell v. Wolfish, 441 U.S. 520, 535, 538 (1979).

If Webb was under the impression that he had effectively sued Hernandez in both his official and individual capacities, as he indicates in his appellate brief, he offered no evidence at trial of the overcrowding being the result of deliberate indifference on Hernandez's part or the result of punishment for which Hernandez was responsible that was not incident to some other legitimate governmental purpose.³ Accordingly, the district court did not abuse its discretion in denying Webb leave to amend his complaint with respect to this claim against Hernandez in his individual capacity.

Although we can readily observe a viable reason for the district court's denial of Webb's motion for leave to amend his complaint with respect to his access-to-the-courts claim and his conditions-of-confinement claim against Hernandez in his individual capacity, we cannot do the same with respect to Webb's claim that the defendants in their individual capacities were deliberately indifferent to his serious medical needs. Hence, we conclude that the district court abused its discretion in denying Webb's motion for leave to amend with respect to his medical claim.

³ The record indicates that Hernandez's testimony at trial established that the TCADC's overcrowding problem was the result of a backlog of state prisoners unable to enter the state institutional division. He further testified that he had no power or authority regarding the overcrowding problem in the TCADC. Webb offered no evidence whatsoever to rebut or to contradict Hernandez's testimony.

III.

Webb also contends that the district court erred by accelerating the time schedule in his case and thereby denied him his right of access to the courts because he could not adequately prepare for trial. We disagree.

On January 19, 1993, the district court entered a scheduling order, stating that all motions to amend the pleadings should be filed by April 1, 1993, and that all discovery should be completed by October 1, 1993. On January 21, 1993, the district court entered a pre-trial notice and order that trial would begin on April 5, 1993.

A district court has broad discretion in controlling its own docket. Edwards v. Cass County, Tex., 919 F.2d 273, 275 (5th Cir. 1990). The trial of Webb's claims began more than one year after Webb filed his original complaint. Webb did not file his motion for more time to complete discovery until April 14, 1993—the day before trial actually began—and he did not file a motion for a continuance. Further, at trial the district court allowed Webb to call witnesses even though Webb had not supplied the defendants with a witness list, thus mitigating any prejudice Webb might have suffered as a result of the accelerated trial date. We therefore cannot conclude that the district court abused its discretion by setting the trial date and accelerating the trial schedule.

IV.

For the foregoing reasons, we AFFIRM in part and VACATE in part the judgment of the district court, and REMAND for further proceedings consistent with this opinion.