

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1810
Conference Calendar

KEVIN LEE DAHL,

Plaintiff-Appellant,

versus

CITY OF WICHITA FALLS,
TX, ET AL.,

Defendants-Appellees.

STATE OF TEXAS,

Appellee.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:93-CV-068-K
- - - - -
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Kevin Lee Dahl challenges the district court's dismissal of his action for failure to state a claim under Fed. R. Civ. P. 12(b)(6). In reviewing a court's dismissal for failure to state a claim under Rule 12(b)(6), this Court must take the plaintiff's factual allegations as true and must not affirm "unless it appears beyond doubt that the plaintiff can prove no set of facts

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

in support of his claim which would entitle him to relief.'" McCormack v. National Collegiate Athletic Ass'n, 845 F.2d 1338, 1343 (5th Cir. 1988) (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). This Court reviews the district court's dismissal under Rule 12(b)(6) de novo. Walker v. South Cent. Bell Tel. Co., 904 F.2d 275, 276 (5th Cir. 1990).

Dahl concedes that, as an applicant for employment, he does not have a property interest in employment with the Wichita Falls Police Department. See Farias v. Bexar City Bd. of Trustees for M.H.M.R. Serv., 925 F.2d 866, 877 (5th Cir.) ("The hallmark of a protected property interest is an entitlement under state law that cannot be removed except for cause."), cert. denied, 112 S.Ct. 193 (1991). Rather, Dahl argues that the rejection of his application, because of an unsatisfactory background check, triggered a liberty interest sufficient to require procedural due process protections. This argument is meritless.

A public employer who discharges an employee under stigmatizing circumstances without giving him an opportunity to clear his name may unconstitutionally deprive that employee of a liberty interest. Arrington v. County of Dallas, 970 F.2d 1441, 1447 (5th Cir. 1992) (emphasis added).

To assert a claim for the deprivation of this constitutional right to a name-clearing hearing, a plaintiff must allege that he was a public employee, that he was discharged, that stigmatizing charges were made against him in connection with his discharge, that the charges were false, that the charges were made public, that he requested a name-clearing hearing, and that the hearing was denied.

Id. Dahl cites no authority extending this protection to job applicants. Moreover, he has made no showing that the defendants

published stigmatizing information about him. Thus, even if this protection is extended to a job applicant, Dahl has failed to state a valid claim of a protected liberty interest.

AFFIRMED