IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3199
(Summary Calendar)

ALFRED BROWN,

Plaintiff-Appellant,

versus

ED DAY, Warden,
Washington Correctional
Institute, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Louisiana

(CA-93-385-K-5)

(June 4, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Alfred Brown, a Louisiana state inmate in the Washington Correctional Institute (WCI), brought suit against the warden of WCI and others under 42 U.S.C. § 1983. Brown appeals

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the district court's dismissal of his complaint as frivolous, also complaining of the court's refusal to grant Brown's request to amend his complaint. We affirm the district court's dismissal of Brown's original complaint, grounded in denial of his participation in a blood plasma program, and the court's order denying Brown's request to amend his complaint.

I

FACTS AND PROCEEDINGS

Proceeding pro se and in forma pauperis, Brown filed this civil rights suit on February 4, 1993, against WCI Warden Ed Day, Bogalusa Plasma, Inc., Bud Herrington, manager of the Bogalusa Plasma, Inc., the "Head Manager" of the Central Florida Blood Bank, Inc., and Richard Stalder, Secretary of the Louisiana Department of Corrections, for alleged violations of Brown's constitutional rights in connection with the blood plasma program at the WCI. Brown alleged that on January 13, 1993, he donated two bags of blood along with a small test sample. On January 22, 1993, blood plasma manager Bud Herrington refused to allow Brown to give blood plasma, claiming that Brown's blood sample tested positive for the hepatitis C. virus. Brown alleged that Herrington thereafter refused to allow Brown to give blood plasma. Brown contended that he had tested negative for the virus on April 14, 1992, and that his medical records indicate he does not have hepatitis.

Brown also alleged that Warden Day and Secretary Stalder allow Herrington, of the Bogalusa Plasma, Inc., to operate a program that discriminated against Brown. Further, Brown alleged that the

Central Florida Blood Bank, Inc. is responsible for reading the test result, and that the reading may have been false.

On February 10, 1993, Brown filed his first motion to amend his complaint alleging that Warden Day and Bud Herrington conspired to deprive Brown of participation in the plasma program. Brown also alleged that an inmate employee who drew the blood from Brown was not a trained medical technician and thus may have mis-identified Brown's blood test. As compensation, Brown sought monetary damages and a blood test to prove he does not have hepatitis.

The magistrate judge recommended dismissing Brown's complaint without prejudice as frivolous. Over Brown's objections, the district court followed that recommendation. In its Order and Reasons for dismissing Brown's complaint, the district court also denied Brown's second request to amend his complaint.

II

ANALYSIS

A. Dismissal as Frivolous

Brown argues that the district court abused its discretion in dismissing his § 1983 complaint as frivolous. A complaint filed in forma pauperis may be dismissed by the court sua sponte if the complaint is frivolous. 28 U.S.C. § 1915(d). A complaint is "`frivolous where it lacks an arguable basis either in law or in fact.'" Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992) (citing Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989)). We review a

§ 1915(d) dismissal for abuse of discretion. Denton, 112 S.Ct. at 1734.

A viable cause of action under § 1983 must contain an allegation of the violation of a federally protected right by one acting under color of state law. Barnes v. Lehman, 861 F.2d 1383, 1385 (5th Cir. 1988). Brown admits that giving blood plasma is only a privilege but argues that he was terminated from the program without due process protections. Specifically, Brown contends that he was deprived of the legal right to present medical records proving he does not have hepatitis.

Under some circumstances, a state may create a protected liberty interest by placing substantive limits on the officials' discretion. Olim v. Wakinekona, 461 U.S. 238, 249, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983). A liberty interest protected by the Due Process Clause "cannot be the right to demand needless formality. Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement." Id. at 250 (internal quotations and citation omitted).

As Brown has admitted that his ability to participate in the blood plasma program is not a protected liberty interest but is a privilege, there is nothing for due process to protect. Consequently, Brown has failed to assert a violation of a federally protected right which would entitle him to relief under § 1983. The district court properly dismissed as frivolous Brown's claim of due process violations.

Finally, in support of his claims, Brown presents for the first time on appeal information regarding the status of Dr. Rameriz's license to practice medicine and additional allegations regarding how the alleged conspiracy operates. When, for the first time, a party produces on appeal evidence never presented in any form to the district court, we shall not admit that evidence. Leonard v. Dixie Well Service & Supply, Inc., 828 F.2d 291, 296 (5th Cir. 1987). We therefore do not consider Brown's new information on this appeal.

B. Amendment of Complaint

Brown argues that the district court should have considered his request to amend his complaint, which contained sufficient allegations to assert a constitutional violation. In his second motion to amend his complaint, filed with his objections to the magistrate judge's report and recommendation, Brown sought to add Visitacion Rameriz, M.D., as a party, and to add a claim of an Eighth Amendment violation against the prohibition of cruel and unusual punishment. Brown contends that if in fact he does have hepatitis, the doctor and prison officials denied him medical treatment for that condition.

Amendments must be freely permitted unless the ends of justice require denial. Jamieson by and through Jamieson v. Shaw, 772 F.2d 1205, 1208 (5th Cir. 1985); Fed.R.Civ.P. 15(a). The district court's ruling is reviewed for abuse of discretion. Jamieson, 772 F.2d at 1208. A district court must have a substantial reason to deny leave; otherwise, its discretion is not broad enough to

permit denial. Id. (internal citations omitted).

Brown's proposed second amendment alleges that, as a result of his illness, his liver tissues are being irritated. He further alleges that, as a result of Dr. Rameriz's refusal to give Brown needed medication, he continues to suffer pain and stress. On appeal, Brown contends that such denial of medical treatment shows deliberate indifference to his medical needs. We conclude that the district court did not abuse its discretion in dismissing this proposed amendment for two reasons. First, Brown sought leave to amend after the magistrate judge had already made its report and recommendation. Second, Brown's amended complaint is diametrically opposed to his initial allegations that he has no hepatitis as shown by his medical test of April 14, 1992. Consequently, the district court was within its discretion to deny leave to amend. The court's denial of Brown's request for amendment, however, does not bar Brown from pursuing his allegation in a separate proceeding.

For the foregoing reasons we affirm the district court's dismissal of Brown's claim of due process violations. We also affirm the district court's denial of Brown's motion to amend.

AFFIRMED.