

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-3506

(Summary Calendar)

WILLIE TRIPLETT, JR.,

Plaintiff-Appellant,

versus

DEPARTMENT OF SOCIAL SERVICES,
ALTON TOMS, and DONALD MCCANTS,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
(CA-92-667-A-M1)

(June 22, 1994)

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

PER CURIAM:*

Willie Triplett, Jr., proceeding pro se, appeals the district court's summary judgment on his various civil rights claims stemming from the termination of his employment with the Louisiana Department of Social Services. Finding no error, we affirm.

Triplett was convicted of running a stop sign in Baton Rouge, Louisiana, and sentenced to 177 days in a parish jail. As a result

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

from being detained in jail, Triplett was unable to report to work as a rehabilitation aide at the Greenwell Springs Rehabilitation Complex ("Greenwell"), a facility of the State of Louisiana's Department of Social Services ("DSS"). By letter dated August 12, 1991, Triplett was advised that he was being terminated, effective August 19, 1991, for failing to report to work. Triplett was specifically advised that he could appeal his termination pursuant to the provisions of Chapter 13 of the Civil Services Rules. Triplett concedes that he failed to take an appeal within thirty days of receiving his termination letter. His appeal, allegedly filed within thirty days of the effective date of his termination, was dismissed as untimely. After Triplett served his entire sentence, his conviction and sentence were vacated and reversed.

Triplett subsequently brought suit against DSS, Alton Toms and Donald McCants,¹ alleging that the defendants terminated his employment in violation of his constitutional rights to substantive and procedural due process, as well as his rights under the Equal Protection Clause. The district court granted summary judgment for

¹ McCants and Toms were sued in both their individual and official capacities. McCants was the manager of Greenwell and Toms was the director of the Office of Louisiana Rehabilitation Services, which oversaw the operation of Greenwell.

the defendants on all of Triplett's federal claims.² Triplett filed a timely notice of appeal.³

We review the district court's grant of a summary judgment motion de novo. *Davis v. Illinois Cent. R.R.*, 921 F.2d 616, 617-18 (5th Cir. 1991). Summary judgment is appropriate if the record discloses "that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A party seeking summary judgment bears the initial burden of identifying those portions of the pleadings and discovery on file, together with any affidavits, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). Once the movant carries its burden, the burden shifts to the non-movant to show that summary judgment should not be granted. *Id.* at 324-25, 106 S. Ct. at 2553-54. While we must "review the facts drawing all inferences most favorable to the party opposing the motion," *Reid v. State Farm Mut. Auto. Ins. Co.*, 784 F.2d 577, 578 (5th Cir. 1986), that party may not rest upon mere allegations or denials in its pleadings, but must set forth specific facts showing the existence of a genuine

² Triplett had also raised several state law claims. However, in light of its summary judgment on all of Triplett's federal claims, the district court dismissed without prejudice Triplett's state law claims.

³ Because the only timely notice of appeal filed in this action corresponds to the underlying summary judgment, we lack jurisdiction over Triplett's argument on appeal that the district court erred in denying his post-judgment Rule 60 motion. See Fed. R. App. P. 4(a)(4).

issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-57, 106 S. Ct. 2505, 2514, 91 L. Ed. 2d 202 (1986).

Triplett first contends that the district court erred in granting summary judgment on his claims against DSS, and against McCants and Toms in their official capacities. "It is clear, of course, that in the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." *Pennhurst State School & Hosp. v. Halderman*, 104 S. Ct. 900, 908 (1984) (citations omitted). "This jurisdictional bar applies regardless of the nature of the relief sought." *Id.* There is no evidence in the record to suggest that any of the defendants consented to this suit. Consequently, the district court correctly concluded that Triplett's claims against DSS, and against McCants and Toms in their official capacities, were barred under the Eleventh Amendment. *See Will v. Michigan Dep't of State Police*, 109 S. Ct. 2304, 2311 (1989) ("[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office.").

Triplett also contends that the district court erred in granting summary judgment on his claims against McCants and Toms in their individual capacities for deprivations of his substantive due process and equal protection rights under the Fourteenth Amendment. "To succeed with a claim based on substantive due process in the public employment context, the plaintiff must show two things: (1) that he had a property interest/right in his employment, and

(2) that the public employer's termination of that interest was arbitrary or capricious." *Moulton v. City of Beaumont*, 991 F.2d 227, 230 (5th Cir. 1993). Assuming *arguendo* that Triplett had a property interest in his employment with Greenwell, Triplett has not set forth a genuine issue of material fact suggesting that his termination was arbitrary. In deciding whether a government action is arbitrary, we need only determine whether "the government action is a rational means of advancing a legitimate governmental purpose." *Delahoussaye v. City of New Iberia*, 937 F.2d 144, 149 (5th Cir. 1991). The summary judgment evidence shows that Triplett was terminated for failing to report to work. Consequently, Triplett's termination was rationally related to the legitimate state goal of maintaining the efficient operation of the DSS. We therefore conclude that summary judgment was properly entered on Triplett's substantive due process claim.

We also reject Triplett's challenge to the district court's summary judgment on his equal protection claim. An equal protection claim is premised on a governmental classification between two or more relevant groups))i.e., discrimination. *Brennan v. Stewart*, 834 F.2d 1248, 1257 (5th Cir. 1988). Because Triplett fails to set forth any facts which would create a genuine issue of material fact regarding his claim of discrimination, we conclude that summary judgment was properly entered on this claim.⁴

⁴ Triplett also argues that the district court erred in granting summary judgment on his claims that the defendants conspired to deprive him of his substantive due process and equal protection rights under the Fourteenth Amendment. See 42 U.S.C. §§ 1985(3), 1986. Because Triplett fails to set forth any facts

Lastly, Triplett contends that the district court erred in granting summary judgment on his claims against McCants and Toms in their individual capacities for deprivations of his procedural due process rights under the Fourteenth Amendment. Triplett argues that his termination letter was so vague as to when the running of the clock for a timely appeal commenced that it effectively deprived him of his procedural due process rights. "We examine procedural due process questions in two steps: the first asks whether there exists a liberty or property interest which has been interfered with by the State; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient." *Kentucky Dep't of Corrections v. Thompson*, 109 S. Ct. 1904, 1908 (1989). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 70 S. Ct. 652, 657 (1950); see also *Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883, 887 (5th Cir. 1989) (observing that "*Mullane* remains our trusted guide").

The summary judgment record belies Triplett's claim.⁵ The record reflects that Triplett was sent a termination letter which

demonstrating a genuine issue of material fact, we conclude that summary judgment was properly entered on these claims.

⁵ In concluding that the procedures attendant upon the deprivation were constitutionally sufficient, we assume, without deciding, that Triplett had a property interest in his employment.

explicitly stated that any appeal of his termination "must conform to the provisions of Chapter 13 of the Civil Services Rules." Under Civil Service Rule 13.12(a)(1), Triplett had "thirty (30) calendar days after the date on which appellant received written notice of the action on which the appeal is based," in which to file his appeal. Based on these undisputed facts, the district court properly concluded that Triplett received notice reasonably calculated to apprise him of the time limits in which to present his objections. We therefore uphold the court's summary judgment on Triplett's procedural due process claim.

Accordingly, we AFFIRM the judgment of the district court.