IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 93-7191
Summary Calendar

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AUNDRAY ISAAC,

Plaintiff-Appellant,

versus

C.V. GLENNIS,
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the
Southern District of Mississippi
(CA-J92-0600(L)(N))

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(July 29, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.*

GARWOOD, Circuit Judge:

Plaintiff-appellant Aundray Isaac (Isaac) appeals the district court's dismissal of his 42 U.S.C. § 1983 lawsuit against defendant-appellees Pike County, Mississippi (Pike County), Pike County Sheriff, G. V. Glennis (Glennis), Amite County, Mississippi

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

(Amite County), and Amite County Sheriff, Gene McClendon (McClendon).[1] We modify and affirm in part, vacate in part, and remand for further proceedings in accordance with this opinion.

Facts and Proceedings Below

On September 24, 1992, Isaac, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this lawsuit pursuant to 42 U.S.C. § 1983. In his complaint,[2] Isaac stated that on January 17, 1992, he and four other Mississippi state prisoners (collectively "Transferees") were transferred from the Pike County jail to the Amite County jail. Approximately ten days later, the Amite County jail was set on fire.[3] According to Isaac, although he and the other Transferees complained of smoke inhalation due to the fire, Amite County deputies provided medical treatment to only the Amite County inmates.

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[1] Isaac's complaint named the Pike County and Amite County sheriff's departments as defendants. The district court, noting that law enforcement departments are not legal entities subject to suit, liberally construed the *pro se* complaint as a section 1983 claim against each county and its respective sheriff.

[2] On November 24, 1992, the magistrate ordered Isaac to file an amended complaint that specifically stated how Glennis had violated his constitutional rights. Isaac's amended complaint did not state any new allegations and, in fact, was just a very abbreviated version of the original complaint. It appears that Isaac intended to file a supplemental complaint instead of an amended complaint, since as a general rule an amended complaint supersedes the original complaint. *Clark v. Tarrant County*, 798 F.2d 736, 740 (5th Cir. 1986). Due to Isaac's *pro se* status, we will treat the amended complaint as a supplemental complaint. *See Jacquez v. Procunier*, 801 F.2d 789, 793 (5th Cir, 1986).

[3] There is a dispute as to how the fire started. Isaac alleges that one of the Amite County deputies started the fire, whereas the Amite County sheriff's department contends that the Transferees were responsible.

Shortly thereafter,[4] the Transferees were sent back to the Pike County jail. Isaac asserted that although he informed Pike County jail officials of his injuries, they also refused to provide him with medical treatment. Isaac further alleged that during the following week he informed the Pike County "supervisors" about his lack of medical treatment, but received no response. Isaac stated that he did not receive any medical treatment until approximately two months later, after he was sentenced and sent to a correctional facility in Rankin County, Mississippi.

In response to Isaac's complaint the defendants filed a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss. On March 4, 1993, the district court ruled that Isaac failed to state a claim upon which relief could be granted under the "heightened pleading requirement" and dismissed with prejudice. Isaac now appeals.

Discussion

I. Heightened Pleading Requirement

The heightened pleading requirement was established by this Circuit in *Elliott v. Perez,* 751 F.2d 1472, 1482 (5th Cir. 1985). Under this requirement, a plaintiff suing a government official for damages pursuant to section 1983 must state with factual detail and particularity the basis of the claim, including why the qualified immunity defense could not be maintained. *Id*. The court in *Elliott* concluded that the doctrine of immunity conferred upon a

[4] It is unclear from Isaac's complaint whether the Transferees were sent back to the Pike County jail the same day.

defendant government official not only immunity from liability, but also immunity from defending against a lawsuit. *Id*. at 1478. This Circuit later expanded the heightened pleading requirement to all section 1983 lawsuits. *See, e.g.*, *Palmer v. San Antonio*, 810 F.2d 514, 516-17 (5th Cir. 1987).

The heightened pleading requirement was overruled in part by the Supreme Court's decision in *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 113 S.Ct 1160, 1163 (1993). *Leatherman* involved a section 1983 lawsuit that alleged a failure by the municipal defendants to adequately train its police officers. 113 S.Ct at 1161. The lawsuit had been dismissed by the district and appellate courts based on the heightened pleading requirement. *Id*. The Supreme Court reversed the dismissal and held that a heightened pleading requirement may not be applied to section 1983 lawsuits against municipalities.[5]

Based on *Leatherman*, Isaac's complaint against the municipal defendants Amite County and Pike County, and McClendon and Glennis in their official capacities, does not have to satisfy the heightened pleading requirement.[6] Therefore, as to them Isaac's

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[5] *Id*. at 1163. The Court reasoned that as municipal defendants do not enjoy qualified immunity, the purpose of heightened pleadings, which is to give defendants immunity from the pre-trial preliminaries of a lawsuit, is not served with these defendants. *Id*. at 1162.

[6] The Supreme Court left open the question whether a complaint filed against a government official sued in his individual capacity may be subject to the heightened pleading requirement. *Id*. at 1162. We decline to address that issue because the result is the same whether we apply to McClendon and Glennis in their individual capacities the heightened pleading requirement or the

complaint must only comply with the Federal Rules of Civil Procedure. Under Rule 8(a)(2), a complaint is required to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Isaac's complaint should give the defendant fair notice of what the claim is and the grounds upon which it rests. *Leatherman*, 113 S.Ct. at 1163 citations omitted).

II. Amite County & McClendon

A municipality cannot be held liable under a theory of *respondeat superior*. *Monell v. Department of Social Servs.*, 98 S.Ct. 2018, 2036 (1978). In order to establish municipal liability under section 1983, a plaintiff must establish that there was "(1) a policy (2) of the [municipality's] policymaker (3) that caused (4) . . . deprivation of a constitutional right." *Grandstaff v. Borger*, 767 F.2d 161, 169 (5th Cir. 1985). Such limitations also apply when a sheriff or similar official is sought to be held liable for acts of his subordinates. *Thompkins v. Belt*, 828 F.2d 298, 303 (5th Cir. 1987).

Although in his complaint Isaac states that several Amite County deputies refused to provide him medical treatment, he fails to plead that an Amite County policy or custom caused the deprivation. In addition, the facts as alleged do not support an inference that a policy or custom instituted by the sheriff or governing body (i.e., the policymaker), was a factor in the denial of medical treatment to Isaac. Unlike the plaintiffs in

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ordinary standard under Federal Rule of Civil Procedure 8(a)(2).

Leatherman, Isaac does not specify any action by Amite County or the Amite County sheriff as the cause of his failure to receive medical treatment.[7] In addition, Isaac's pleadings do not allege that McClendon was in any way involved in his denial of medical treatment. Isaac has not pleaded sufficient facts to support recovery based on municipality liability against Amite County or personal liability against McClendon. Although his complaint contains serious allegations against several deputies in their individual capacities, it fails to state a claim against defendants Amite County and McClendon. Thus, the district court's dismissal of Isaac's lawsuit against defendants Amite County and McClendon is affirmed.

II. Pike County and Glennis

A plaintiff suing under section 1983 may recover against a municipality if he shows that some municipal custom or policy caused a deprivation of reasonable medical attention. *Rhyne v. Henderson County*, 973 F.2d 386, 392 (5th Cir. 1992). The policy must be a deliberate and conscious choice by the municipality's policymaker. *Id*.

In contrast to his pleadings against Amite County, Isaac states that officials at the Pike County jail knew of his failure to receive medical treatment. Isaac's complaint alleges that Pike

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[7] The plaintiffs in *Leatherman* alleged that the municipality had failed to adequately train its police officers. 113 S.Ct at 1161. This allegation specified the custom or policy that had caused the constitutional deprivation. Isaac, however, has not specified any custom or policy promulgated by Amite County officials which caused a deprivation of his constitutional rights.

County "county supervisors"SQpresumably the county's governing bodySQwere informed about his lack of medical treatment after the Amite County fire, but refused to provide him with any medical treatment during the approximately two months he was detained at the Pike County jail. Isaac's complaint asserts that "supervisors," and not just individual deputies, purposefully denied him needed medical treatment.

These allegations by Isaac, a *pro se* plaintiff, sufficiently plead municipal liability under section 1983 since he establishes: (1) it was the policy of (2) Pike County that (3) caused (4) him to be deprived of needed medical treatment during the time he was detained at the Pike County jail.

Isaac's pleadings against Pike County and the supervisor of the sheriff's department, Glennis, satisfy the liberal "notice pleading" system of FED. R. CIV. P. 8(a)(2) since it gives them fair notice of his claim and the grounds upon which it rests. While it is a closer question as to whether the claim against Glennis individually satisfies the heightened pleading requirement, we conclude that, under all the circumstances, the dismissal as to Glennis individually should also be vacated. Of course, Glennis, and Pike County for that matter, may move for a more definite statement. Therefore, the district court's dismissal of Isaac's lawsuit against Pike County and Glennis is vacated.

For the foregoing reasons, we **AFFIRM** the district court's dismissal of Isaac's claims against Amite County and McClendon, but **MODIFY** the judgment in this respect to make the dismissal without

prejudice.[8] We **VACATE** the district court's dismissal of Isaac's claims against Pike County and Glennis, and **REMAND** for further proceedings in accordance with this opinion.

AFFIRMED in part, MODIFIED in part, VACATED in part, and REMANDED.

[8] "When dismissal of a *pro se* complaint is warranted, it should generally be without prejudice in order to afford the plaintiff the opportunity to file an amended complaint." *Good v. Allain*, 823 F.2d 64, 67 (5th Cir. 1987). Nothing in Isaac's pleadings affirmatively negates possible liability of Amite County and McClendon.