UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-8046
Summary Calendar

SAUL B. WILEN,

Plaintiff-Appellant,

VERSUS

CITY OF SAN ANTONIO, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(SA-92-CV-1075)

(March 22, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Appellant challenges the dismissal of his civil rights action against San Antonio officials and others. We affirm.

I.

Saul Wilen (Wilen) is a physician in San Antonio, Texas. The building in which he conducts his practice is a national historic site and is located in an historic district. Wilen alleges that one of his neighbors called to complain about the "class" of his

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

patients and referred to his patients as "those people." Approximately ninety-five percent of Wilen's patients are black or Hispanic and most are physically handicapped. In April 1992, several of Wilen's neighbors signed a petition seeking parking restrictions in the neighborhood.

In October 1992, the City of San Antonio placed "no parking" signs along the street outside of Wilen's office, except for two small areas on his curbside. A San Antonio police officer ticketed Wilen's patients and employees. Wilen alleges that guests and friends of other neighborhood residents were not ticketed and that members of a neighborhood church, among others, were given a ten-day grace period. Moreover, according to Wilen, the parking restrictions are not enforced on weekends, when most of the people parking in the area are white. Wilen alleges that he has lost patients as a result of the parking restrictions. Wilen filed a civil rights complaint against several of his neighbors and city officials, alleging that the defendants conspired to deprive him, his employees and his patients of "their constitutional right . . . to park on a public street."

The district judge referred Wilen's request for a preliminary injunction to the magistrate judge. The magistrate judge recommended that the district court dismiss Wilen's complaint because Wilen lacked standing to assert his patients' claims and because he failed to state a claim for a violation of his own civil rights. Wilen filed written objections to the magistrate judge's report and recommendations. He later sought to amend his complaint

to include a claim under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12001. The district judge, without ruling on Wilen's motion for leave to amend, adopted the magistrate judge's report and recommendations and dismissed Wilen's case without prejudice. Wilen appeals.

II.

Wilen first contends that the magistrate judge was not authorized to recommend that his case be dismissed for failure to state a claim. Wilen argues that the magistrate judge exceeded the bounds of his authority and invented a "phantom pretrial motion" to dismiss as he was not authorized to do.

Wilen, however, did not raise an objection to the magistrate judge's authority in his written objections to the magistrate judge's report and recommendations. "A party waives his objections when he participates in a proceeding before a magistrate and fails to make known his lack of consent or fails to object to any other procedural defect in the order referring the matter to the magistrate until after the magistrate has issued her report and recommendations." **McLeod, Alexander, Powel & Apffel, P.C. v. Quarles**, 925 F.2d 853, 857 (5th Cir. 1991). Wilen waived his procedural objections by failing to raise them in the district court.

Wilen next contends that the magistrate judge considered material outside the pleadings and thus, in effect, recommended that the district court grant summary judgment rather than dismissal for failure to state a claim. Specifically, Wilen argues

that the magistrate judge's analysis of the Takings Clause of the Fifth Amendment constituted consideration of material outside of his complaint.

The record reflects that the magistrate judge liberally construed Wilen's complaint as alleging a violation of the Takings Clause. The magistrate judge's consideration of that issue did not require consideration of material outside of the pleadings.

Wilen next contends that the magistrate judge and the clerk of the district court failed to give him adequate notice of his right to object to the magistrate judge's report. Wilen's contention is baseless. First, the magistrate judge informed Wilen that he had ten days in which to object and that failure to object would preclude de novo review by the district court and would preclude appellate challenge to the magistrate judge's factual findings. The magistrate's warning was appropriate. **See Nettles v. Wainwright**, 677 F.2d 404, 410 (5th Cir. Unit B 1982)(en banc). Moreover, Wilen filed timely objections to the report. **See** Fed. R. Civ. P. 6(a).

Wilen also contends that the district court erred because it did not grant his motion to file his second amended complaint. The district court did not rule on Wilen's motion for leave to amend. By declining to rule on Wilen's motion, the district court effectively denied it.

On his motion for leave to amend, Wilen sought to add a claim under the non-retaliation section of the Americans With Disabilities Act (ADA), 42 U.S. C. § 12203. A party must obtain

leave of court to amend his or her pleading once responsive pleadings have been filed. Fed. R. Civ. P. 15(a). Leave is to be freely given when justice so requires. **Id**. A district court's decision on a motion for leave to amend will be reversed only for abuse of discretion. **Boyd v. U.S.**, 861 F.2d 106, 108 (5th Cir. 1988). District courts can deny leave only when substantial reason exists for the denial. **Jamieson v. Shaw**, 772 F.2d 1205, 1208 (5th Cir. 1985).

The district court had a substantial reason for effectively denying Wilen's motion to amend. Wilen alleges that one of the parking restrictions was targeted at prohibiting personal attendants from remaining in the car while the handicapped patient sees the doctor. Under the facts alleged, Wilen's complaint cannot be liberally construed to state a cause of action under the ADA. The ADA creates rights in favor of "qualified individual[s] with [] disabilit[ies]." 42 U.S.C. § 12132. Wilen therefore is apparently seeking to invoke the rights of his patients with disabilities, which he does not have standing to do. **See, e.g., Warth v. Seldin**, 422 U.S. 490 (1975);and **Walter v. Torres**, 917 F.2d 1379, 1382 (5th Cir. 1990). Allowing the amendment, therefore, would have been futile.

Wilen next contends that the district court should have given him a hearing on his second motion for injunctive relief. We disagree. His second motion recast the same facts and added new case citations but brought forward no significantly new arguments.

For the foregoing reasons, the district court's dismissal of

Wilen's complaint is AFFIRMED.