IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-8294

Summary Calendar

DONALD WAYNE ENGELKING,

Plaintiff-Appellant,

v.

CARL WATTERS, Ector County Deputy Sheriff, Narcotics Department, Odessa, Texas in Ector County, and ECTOR COUNTY SHERIFF'S DEPARTMENT,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(M0 90 CA 139)

(April 13, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

In Engelking v. Watters, No. 91-8319 (5th Cir. April 16, 1992) (unpublished), this court remanded Donald Wayne Engelking's civil rights claim that he had been unlawfully deprived of medical care while detained by Carl Watters (Watters), a deputy sheriff in Odessa County, Texas. The district court then granted

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Watters' motion for summary judgment on grounds of qualified immunity, and Engelking appeals. Finding no error, we affirm the judgment of the district court.

I.

Proceeding pro se and in forma pauperis, Donald Wayne Engelking (Engelking) filed a civil rights action under 42 U.S.C. § 1983 against Watters, a deputy sheriff in Ector County, Texas, after Watters conducted an alleged warrantless search of Engelking's car and detained him.[1] Engelking alleged violations of his rights under the Fourth, Sixth, and Eighth Amendments. Watters moved to dismiss all of Engelking's claims against him, asserting the defense of qualified immunity. The district court then granted Engelking's motion to dismiss, and Engelking appealed.

This court affirmed the district court's dismissal of Engelking's claims based on the Fourth and Sixth Amendments, but reversed and remanded his claim allegedly based on the Eighth Amendment, i.e., Watters' refusal to provide Engelking with medical care while Engelking was detained. See Engelking v. Watters, No. 91-8319 (5th Cir. April 16, 1992) (unpublished). We explained that because Engelking was a pre-trial detainee at the

[1] The conduct that formed the basis for Engelking's complaint was the beginning of a series of events which ultimately led to Engelking's conviction under a nine-count indictment charging conspiracy, drug, and firearm offenses. A more complete recitation of the facts of this case can be found in this court's opinion affirming Engelking's conviction. See United States v. Engelking, No. 90-1060 (5th Cir. Sept. 7, 1990) (unpublished).

time of Watters' allegedly violative conduct, the district court's application of the standard for medical care due convicted prisoners as set forth in Estelle v. Gambele, 429 U.S. 97 (1976), was improper. See Engelking, No. 91-8319, at 11. We further explained that a pre-trial detainee was "entitled to reasonable medical care unless the failure to supply that care is reasonably related to a legitimate governmental objective," and that a pre-trial detainee's claim for the denial of medical care was grounded not in the prohibition on cruel and unusual punishment contained in the Eighth Amendment but in the due process guarantee of the Fourteenth Amendment. Id. at 11-12. We thus determined that because Engelking stated that he was in need of medical care while he was a pre-trial detainee and that Watters refused to give him that care, he had sufficiently set forth a cognizable claim under § 1983 for the violation of his due process rights. Id. at 12. However, we found that the record in its current state appeared insufficient to enable a court to resolve the question of qualified immunity. Id. Accordingly, we remanded Engelking's claim for the denial of medical care to the district court, noting that Watters was not precluded from filing another motion for summary judgment based on qualified immunity. Id. at 13.

On remand, Watters moved for summary judgment on the basis of qualified immunity. The district court granted Watters' motion, and the instant appeal ensued.

II.

We review the granting of summary judgment de novo, applying the same criteria used by the district court in the first instance. That is, we review the evidence and inferences to be drawn therefrom in the light most favorable to the non-moving party. Federal Deposit Ins. Corp. v. Dawson, 4 F.3d 1303, 1306 (5th Cir. 1993); Fraire v. City of Arlington, 957 F.2d 1268, 1273 (5th Cir.), cert. denied, 113 S. Ct. 462 (1992). Summary judgment is proper if "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c).

To determine whether a defendant official is entitled to qualified immunity, a court must first ascertain whether the plaintiff has sufficiently asserted the violation of a constitutional right. Siegert v. Gilley, 111 S. Ct. 1789, 1793-94 (1991); Brewer v. Wilkinson, 3 F.3d 816, 821 (5th Cir. 1993), cert. denied, 114 S. Ct. 1081 (1994). If the plaintiff has asserted the violation of a constitutional right, a court must then determine whether the defendant's conduct was objectively reasonable in the light of the law as it existed at the time of the conduct in question. Brewer, 3 F.3d at 820.

We previously determined that Engelking had asserted the violation of a constitutional right. On remand, the district court determined that if Watters had been aware of Engelking's alleged need for emergency medical care and had denied Engelking's request for such care, the nature of Engelking's

alleged injuries and the duration of his detention did not amount to a denial of medical care that violated the Fourteenth Amendment. We agree.

As the district court correctly observed, once a pre-trial detainee sets forth a claim for the unlawful denial of medical care, the inquiry becomes whether such denial was objectively reasonable in light of the Fourteenth Amendment's guarantee of reasonable medical care and prohibition on punishment of pre-trial detainees. Fields v. City of South Houston, 922 F.2d 1183, 1191 (5th Cir. 1991) (quotation and citation omitted); Pfannstiel v. City of Marion, 918 F.2d 1178, 1186 (5th Cir. 1991). In an answer to Watters' interrogatories, Engelking stated that during his five-hour detainment, Watters' "harassment tactics" caused Engelking's blood pressure to rise, which in turn caused swelling in his already-injured hand, and that Watters refused his plea to be taken to a hospital. Watters, however, testified in his affidavit attached to his motion for summary judgment that Engelking "did not appear to have any serious medical needs and did not request medical attention."

Assuming arguendo that Watters did deny Engelking requested medical attention, such a denial was not objectively unreasonable in light of clearly established law, given the nature of Engelking's injury and the length of his detention. See Pfannstiel, 918 F.2d at 1186-87. Engelking admits that when he was released from his detainment, he went to a hospital, received medical attention for his swollen hand, and was released.

Further, he has not alleged that the five-hour delay caused any complications. Therefore, the district court did not err in granting Watters summary judgment on Engelking's claim for the denial of medical care on qualified immunity grounds.

III.

Following remand, Engelking sought to amend his complaint to allege that Watters deprived him of his money and personal property during his detainment in violation of his Fifth and Fourteenth Amendment due process rights. The district court denied his motion without reasons. Engelking now contends that the district court erred in denying his motion to amend his complaint, particularly noting that the district court gave no reasons for its denial. We disagree.

Federal Rule of Civil Procedure 15(a) provides for leave to amend a complaint after responsive pleadings have been filed. See FED. R. CIV. P. 15(a). However, leave to amend is by no means automatic, and the decision to grant or deny such leave is left to the sound discretion of the trial court. Avatar Exploration, Inc. v. Chevron, U.S.A., Inc., 933 F.2d 314, 320 (5th Cir. 1991); Daly v. Sprague, 742 F.2d 896, 900 (5th Cir. 1984). Thus, we review the district court's denial of a motion for leave to amend for abuse of discretion. Avatar, 933 F.2d at 320.

We first note that this case was remanded on the specific and narrow grounds of Engelking's claim that he was denied medical care and not for a reconsideration of the entire controversy. The limited scope of remand may therefore have

precluded the district court from considering additional claims. See Daly, 742 F.2d at 900. However, Engelking argues that his claim for the unlawful deprivation of his property is factually intertwined with his denial-of-medical-care claim and that he had presented it to the district court "from the very start."[2]

Assuming arguendo that Engelking's claim for the unlawful deprivation of his property is not beyond the scope of remand, the district court did not err in denying Engelking leave to amend his complaint. When a reason for denying leave to amend is ample and obvious, the district court's failure to articulate a specific reason does not indicate an abuse of discretion. Ashe v. Corley, 992 F.2d 540, 542-43 (5th Cir. 1993). An acceptable reason for denying leave to amend is the futility of the amendment. Id. at 542.

The intentional deprivation of property does not implicate federal due process concerns if the state provides an adequate post-deprivation remedy. Hudson v. Palmer, 468 U.S. 517, 533

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[2] In Engelking's original complaint, he stated:

> Defendant violated Plaintiff's Fourth, Sixth, and Eighth Amendment Rights guaranteed in the United States Constitution by an unlawful stop, arrest, and seizure of his person and property, holding him incommunicado for five (5) hours while denying him access to an attorney or a telephone call to an attorney. Plaintiff was released because he had committed no offense under State or Federal Law only after he paid the necessary blackmail demand to Defendant of the chemicals and $500.00 in order to leave.

He then went on to specify three distinct causes of action, alleging violations of the Fourth, Sixth, and Eighth Amendments, respectively. Throughout the course of the litigation up to and beyond the point of remand, Engelking failed to give the district court--or this court--any indication that he was asserting a claim for the unlawful deprivation of his property under the Fifth and Fourteenth Amendments.

(1984); Marshall v. Norwood, 741 F.2d 761, 764 (5th Cir. 1984). Engelking has a right of action under Texas law for any alleged negligent or intentional deprivation of property. Meyers v. Adams, 728 S.W.2d 771, 772 (Tex. 1987); see Thompson v. Steele, 709 F.2d 381, 383 (5th Cir.), cert. denied, 464 U.S. 897 (1983). He makes no allegation whatsoever that this remedy is inadequate. Accordingly, Engelking has not stated a § 1983 claim for the alleged unlawful deprivation of his property, and the district court's granting Engelking leave to amend his complaint would have been futile. The district court thus did not err in denying Engelking's motion to amend his complaint.

IV.

Engelking also asserts that the district court abused its discretion in failing to rule on his motion for production of documents before the court granted Watters' motion for summary judgment. We disagree.

Control of discovery is committed to the sound discretion of the trial court, and a trial court's discovery ruling will be reversed only when it is arbitrary or clearly unreasonable. Williamson v. United States Dep't of Agric., 815 F.2d 368, 382 (5th Cir. 1991). The trial court's ruling on a motion for summary judgment, effectively cutting off the plaintiff's entitlement to discovery, is not error when the record shows that the requested discovery is "not likely to produce the facts needed by the plaintiff" to withstand the defendant's motion for summary judgment. See id. Further, discovery does not have to

be allowed when a state official has asserted the defense of qualified immunity, for summary judgment can be based on the parties' pleadings alone. See id.; see also Harlow v. Fitzgerald, 475 U.S. 800, 818 (1982) (stating that until the "threshold immunity question is resolved, discovery should not be allowed"). We thus cannot say that the district court abused its discretion in refusing to grant Engelking's motion for production of documents.

V.

For the foregoing reasons, we AFFIRM the judgment of the district court.