

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-11059
Summary Calendar

FREDDIE JOE RAY,

Plaintiff-Appellant,

VERSUS

SCOTT WARD, Deputy, Hale
County Sheriff's Office, ET AL.,

Defendants-Appellees

FREDDIE JOE RAY,

Plaintiff-Appellant,

VERSUS

PEGGY HATCHER, ET AL.,

Defendants-Appellees

FREDDIE JOE RAY,

Plaintiff-Appellant,

VERSUS

DAMON WILLIS,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Texas
(5:94-CV-56-C c/w 94-CV-79; 94-CV-107)

(May 12, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:¹

Ray appeals the dismissal of his § 1983 suit against Hale County and a number of deputy sheriffs. We affirm.

I.

Freddie Joe Ray, a former inmate of the Hale County Jail, filed suit against the Hale County Sheriff's Department and the following deputies of the Hale County Sheriff's Department: Scott Ward, Peggy Hatcher, Shane Johnson, and Clyde Vandergriff.² Ray alleged that, while he was a pretrial detainee at the jail, defendants Hatcher, Vandergriff, and Johnson, deprived him of adequate medical care. He further alleged that he was taken the emergency room of a local hospital because of pain. Although Ray did not elaborate on the source of his pain or what events took place at the hospital, Ray alleged that he was prescribed medication when he was released. **Id.** He further alleged that, on February 19, 1994, defendant Ward mistakenly gave him another inmate's medication rather than his own.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

² Ray also filed suit against Deputy Damon Williams; however, he alleges on appeal that his suit against Williams "does not have any facts that forms [sic] a basis for his appeal." In a "supplemental report," Ray listed Deputy Brent as a defendant. However, Brent was not served and, thus, was not a party to this lawsuit. **See id.** at 17 (ordering service of defendants listed in complaint only).

The deputy defendants and Hale County answered the complaint and alleged that Ray failed to state a claim upon which relief could be granted. Subsequently, the deputy defendants filed motions for summary judgment and submitted affidavits supporting their motions. The magistrate judge ordered that Ray respond to the defendants' motions within 30 days. Despite two extensions, Ray did not timely respond to the deputy defendants' motions for summary judgment.

Adopting the report and recommendation of the magistrate judge, the district court granted the deputy defendants' motions for summary judgment and dismissed without prejudice the complaint against Hale County under Fed. R. Civ. P. 12(b)(6). Ray timely appealed. This appeal followed.

II.

The deputy defendants have filed an appellate brief in support of the district court's grant of summary judgment in their favor. However, Ray's brief does not suggest that he wishes to appeal the district court's grant of summary judgment in favor of the deputy defendants. Ray specifically indicates that he is appealing the district court's dismissal of his complaint against Hale County. He recounts the facts underlying his claims against the individual deputy defendants; however, his legal arguments and legal authority all relate to the municipal liability of Hale County. Therefore, we consider Ray's appeal abandoned against the deputies because he does not make any legal argument or cite any legal authority challenging the grant of summary judgment. **See Brinkmann v. Dallas County Deputy Sheriff Abner**, 813 F.2d 744, 748 (5th Cir. 1987).

B.

Ray argues that the district court erred by dismissing his complaint against Hale County. He argues that Deputy Ward gave him the wrong medication because he was not adequately trained by Hale County. He further argues that Hale County should have been aware that its employees were not adequately trained and that "this inadequacy was likely to lead to one's constitutional rights being violated."

To establish municipal or county liability under § 1983 a plaintiff must demonstrate a policy or custom which caused the constitutional violation. **Colle v. Brazos County, Tex.**, 981 F.2d 237, 244 (5th Cir. 1993). Only when the execution of a municipality's or county's policies or customs deprives an individual of constitutional or federal rights does liability under § 1983 result. **Id.** To demonstrate municipal or county liability when a plaintiff is not relying on an explicit, stated policy, the plaintiff must establish "a persistent pattern of conduct." **Richardson v. Oldham**, 12 F.3d 1373, 1381 (5th Cir. 1994).

The district court determined that Ray failed to allege that a policy of the County resulted in his failure to receive adequate medical care. Although Ray alleges on appeal a policy of inadequate training, he alleged no such policy or custom in the district court. Other than list Hale County as a defendant, Ray did not refer to the County in his pleadings in the district court. Thus, the district court did not err by dismissing Ray's complaint against Hale County under Rule 12(b)(6).

C.

Ray argues finally that the district court erred by dismissing his complaint without holding an adequate discovery hearing and without instructing him on how to amend his complaint.

The magistrate judge denied Ray's request for an enlargement of time in which to conduct discovery and ordered that the defendants did not have to respond to discovery. The magistrate judge's reason for doing so was that he had already, **sua sponte**, ordered the defendants to produce Ray's medical and prison records. Discovery matters are entrusted to the "sound discretion" of the district court. **Richardson v. Henry**, 902 F.2d 414, 417 (5th Cir.), **cert. denied**, 498 U.S. 901 (1990) and **cert denied**, 498 U.S. 1069 (1991). The magistrate judge did not abuse its discretion by ordering that discovery be stayed until an examination of Ray's records was complete.

Although **pro se** complaints are construed liberally, a plaintiff must set forth facts giving rise to a claim on which relief may be granted. **Johnson v. Atkins**, 999 F.2d 99, 100 (5th Cir. 1993). Dismissal of a complaint under Rule 12(b)(6) is proper if the complaint lacks an allegation regarding a required element necessary to obtain relief. **Blackburn**, 42 F.3d at 931. Ray's complaint failed to allege a custom or policy giving rise to municipal liability. The district court was not required to give Ray instructions on what he was required to allege to state a claim.

AFFIRMED.