

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-30314  
(Summary Calendar)

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MICHAEL L. BARNES,

Plaintiff-Appellant,

versus

SYMEON C. SYMEONIDES, ET AL.,

Defendants,

SYMEON C. SYMEONIDES,  
Vice Chancellor, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
(CA-93-113-B-M2)

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(January 3, 1995)

Before DUHÉ, WIENER and STEWART, Circuit Judges.\*

PER CURIAM:\*\*

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\*No member of this panel attended the Paul M. Hebert Law Center.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Plaintiff-Appellant Michael L. Barnes, proceeding pro se, challenges the district court's summary judgment in favor of all defendants, dismissing Barnes' civil rights claims advanced under 42 U.S.C. § 1983. For the reasons set forth below, we affirm.

I

FACTS AND PROCEEDINGS

Barnes appeals the summary dismissal of his complaint against Symeon C. Symeonides, Vice Chancellor of the Paul M. Hebert Law Center (the Law Center); Beth W. Loup, Director of Admissions of the Law Center; Winston R. Day, Chancellor of the Law Center; Clarence L. Barney, Chairman of the Louisiana State University Board of Supervisors; and William E. Davis, Chancellor of the Louisiana State University and Agricultural and Mechanical College. Barnes sued all the defendants in their official capacities; he sued Symeonides and Loup in their individual capacities as well. Barnes' claims arise from the underlying facts, which are not really disputed and which we therefore draw from various pleadings in the record.

Barnes alleges that the defendants disregarded university rules and policy and thereby deprived him of a "vested property interest" in returning to the Law Center, in violation of his due process rights. Barnes also argues that the defendants are estopped from denying review of his application for re-admission.

Barnes attended the Law Center until April 1992, when he was dropped from the student rolls for failing to pay his tuition and fees. Barnes had been notified in January that, in order to remain

in school, he had to pay his indebtedness or obtain financial aid. Despite repeated extensions and warnings, however, Barnes did not remit payment and was therefore dropped from the student rolls prior to the spring semester examinations. Barnes nevertheless returned to the Law Center in 1993 and submitted an application for re-admission. Shortly thereafter, he was notified that his application for re-admission would not be considered until he paid his existing indebtedness.

Barnes filed this complaint seeking \$215,000 in actual, compensatory, and punitive damages. The district court concluded that (1) the defendants sued in their official capacities were entitled to Eleventh Amendment immunity; (2) the defendants sued in their individual capacities were entitled to qualified immunity; and (3) Barnes failed to establish a property or liberty interest.

## II

### ANALYSIS

#### A. Standard of Review

We review a grant of summary judgment de novo. See Abbott v. Equity Group, 2 F.3d 613, 618-19 (5th Cir. 1993), cert. denied, 114 S. Ct. 1219 (1994). Summary judgment is proper if the moving party establishes that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Campbell v. Sonat Offshore Drilling, Inc., 979 F.2d 1115, 1118-19 (5th Cir. 1992). To defeat a motion for summary judgment, the opposing party must set forth specific facts showing the existence of a genuine issue for trial. Anderson v. Liberty Lobby, Inc.,

477 U.S. 242, 256-57, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). On appeal from summary judgment, we examine the evidence in the light most favorable to the non-moving party. Salas v. Carpenter, 980 F.2d 299, 304 (5th Cir. 1992).

B. Eleventh Amendment Immunity

The district court concluded that Eleventh Amendment immunity defeated Barnes' official capacity claims. On appeal, Barnes does not challenge the court's Eleventh Amendment holding, so the dismissal of these claims is affirmed. See Atwood v. Union Carbide Corp., 847 F.2d 278, 280 (5th Cir. 1988) (issues not briefed on appeal are waived), cert. denied, 489 U.S. 1079 (1989).

C. Individual Capacity Claims - Qualified Immunity

Barnes contends that university regulations and admissions procedures created a "legitimate expectation" that his debt would not prohibit consideration of his application for re-admission. Barnes complains that the defendants' conduct deprived him of a vested interest in returning to the Law Center. The district court determined that the defendants were entitled to qualified immunity because Barnes failed to establish either a property or a liberty interest and failed to establish that the defendants violated his clearly established rights.

Examining a claim of qualified immunity is a two-step procedure. The first step is to ascertain whether the plaintiff has alleged the violation of a constitutional right. Siegert v. Gilley, 500 U.S. 226, 232, 111 S. Ct. 1789, 114 L.Ed.2d 277 (1991). We use "currently applicable constitutional standards to make this

assessment." Rankin v. Klevenhagen, 5 F.3d 103, 106 (5th Cir. 1993). The second step is to "decide whether the defendant's conduct was objectively reasonable." Spann v. Rainey, 987 F.2d 1110, 1114 (5th Cir. 1993). Reasonableness is assessed in light of the legal rules clearly established at the time of the incident. Id.

Barnes contends that "it is certain that [he] has a vested property interest in returning to the [Law Center] and in continuing his work." He is wrong. Education, particularly post-graduate or professional education, is not a right afforded either explicit or implicit protection under the Constitution. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 34, 93 S. Ct. 1278, 36 L.Ed.2d 16 (1973); see Regents of the Univ. of Mich. v. Ewing, 474 U.S. 214, 222-23, 106 S. Ct. 507, 88 L.Ed.2d 523 (1985) (Court assumed without deciding existence of property right in continued enrollment). Property interests are created and their dimensions are defined by independent sources such as state rules or statutes that secure certain benefits and support claims of entitlement to those benefits. Board of Regents v. Roth, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L.Ed.2d 548 (1972). The limits of such state-created property interests are defined by the same sources that create them. Id. at 577-78.

Barnes also characterizes his interest in continued enrollment as a liberty interest. "[A] State creates a protected liberty interest by placing substantive limitations on official discretion." Olim v. Wakinekona, 461 U.S. 238, 249, 103 S. Ct.

1741, 75 L.Ed.2d 813 (1983). If the state decision-maker is not "required to base its decisions on objective and defined criteria," but can deny relief for any constitutionally permissible reason or for no reason at all, "the State has not created a constitutionally protected liberty interest." Id.

Barnes has not provided, and our independent research has not uncovered, any statutory authority or university policy supporting his alleged property or liberty interests. As Barnes has not proved the deprivation of a constitutionally protected interest, his due process claim fails. See, e.g., Daniels v. Morris, 746 F.2d 271, 276 (5th Cir. 1984); Arundar v. DeKalb County Sch. Dist., 620 F.2d 493 (5th Cir. 1980).

Barnes' asserted right to continue his education is even more attenuated than those asserted by the claimants in Daniels and Arundar. There is no state-created right to graduate-level education, and the Law Center does not provide free education.

Barnes insists nonetheless that his tuition indebtedness should not have prohibited his right to be considered for re-admission. He has provided no evidence of statutory or university policy, however, securing his interest in re-admission without payment of his indebtedness to the Law Center. As the district court determined, Barnes was notified of the conditions he was required to meet before his application for re-admission would be considered. The university required payment of tuition at registration. Financial aid "not received" provided the sole exception to this requirement. Barnes submitted no proof that he

had or would have obtained financial aid when he resumed attendance at the Law Center in the 1993 spring semester. Hence, Barnes may have had an interest in returning to law school prior to having paid his indebtedness, but that interest does not constitute an interest subject to the protections of the Due Process Clause. See Roth, 408 U.S. at 577-78; Daniels, 746 F.2d at 276-77.

Barnes contends that "the Law Center's disregard of University rules regarding student delinquencies . . . resulted in a procedure which substantively violated [his] due process rights." "There is not a violation of due process every time a university . . . [departs from or] violates its own rules." Levitt v. University of Texas, 759 F.2d 1224, 1230 (5th Cir.), cert. denied, 474 U.S. 1034 (1985). "[U]nless the conduct trespasses on federal constitutional safeguards, there is no constitutional deprivation." Id. (citation omitted). Barnes has not demonstrated that the defendants' conduct affected a constitutional right. The district court's decision in this respect is correct.

D. Estoppel

Barnes also argues that "even assuming the rectitude of defendants' actions, the Law Center was estopped from denying review of his application" because he relied on the following assertion made by the Treasurer's Office: "If you register any time during this twelve month period ending May 31, 1992, you must pay all of your tuition and fees plus any delinquent amount in full on the day that you register unless you have financial aid not received." Barnes asserts that this statement indicated that his

tuition indebtedness would not bar consideration of his application for re-admission.

"Estoppel is an equitable doctrine invoked to avoid injustice in particular cases." Heckler v. Community Health Services, 467 U.S. 51, 59, 104 S. Ct. 2218, 81 L.Ed.2d 42 (1984). "Estoppel cannot be used to create a contract right where none exists." Montez v. South San Antonio Indep. Sch. Dist., 817 F.2d 1124, 1126 (5th Cir. 1987) (citation omitted). "[E]stoppel may be asserted only rarely against a governmental entity" and then the party asserting estoppel bears a heavy burden of proof. Id.; see Reeves v. Guiffrida, 756 F.2d 1141, 1143-44 (5th Cir. 1985).

To prevail on his estoppel claim, Barnes had to prove that he changed his position to his detriment by relying on the representations of the Law Center. See Heckler, 467 U. S. at 59. Further, Barnes had to prove that his reliance was reasonable, i.e., that he did not know, nor should he have known, that the Law Center's conduct was misleading. Id. Barnes' interpretation of, and therefore his reliance on, the Treasurer's letter was not reasonable in light of the directives for admission that Barnes had received from the Law Center. The Law Center informed Barnes that his indebtedness caused his removal from the student rolls. Further, the Law Center required payment of that indebtedness prior to his re-admission. Therefore, Barnes' estoppel claim is not well-founded and the district court's grant of summary judgment in favor of the defendants was correct.

AFFIRMED.