# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
**FILED**
October 7, 2025
Lyle W. Cayce
Clerk

No. 25-50047

RICHARD A. DUNSMORE, *Individually and as an Involuntary TCCO Client*,

*Plaintiff—Appellant*,

*versus*

STEPHANIE MUTH, *in her official capacity as the Commissioner of the Texas Department of Family Protective Services*; CECILE ERWIN YOUNG, *in his official capacity as the Executive Commissioner of the Texas Health and Human Services Commission*,

*Defendants—Appellees*.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:24-CV-1426

Before SOUTHWICK, HIGGINSON, and WILSON, *Circuit Judges*.

STEPHEN A. HIGGINSON, *Circuit Judge*:

Plaintiff–Appellant Richard Dunsmore appeals the district court's order dismissing his complaint for failure to state a claim. For the reasons explained below, we AFFIRM.

## I.

Dunsmore is civilly committed as a sexually violent predator (SVP) at the Texas Civil Commitment Center (TCCC). The Texas Civil Commitment Office (TCCO) manages Dunsmore's supervision. Proceeding *pro se* and *in forma pauperis*, Dunsmore sued Defendant–Appellees Stephanie Muth, Commissioner of the Texas Department of Family Protective Services (TDFPS), and Cecile Erwin Young, Executive Commissioner of the Texas Health and Human Services Commission (THHS), under 42 U.S.C. § 1983. Put simply, Dunsmore alleged that TDFPS and THHS failed to investigate his reports of misconduct and abuse at TCCC and that their failures violated his Fourteenth Amendment rights to equal protection and due process, as well as the Bill of Rights for Mental Health Patients, 42 U.S.C. § 9501.

Because Dunsmore was proceeding *in forma pauperis*, the district court evaluated his complaint under 28 U.S.C. § 1915(e)(2)(B) before Defendants were served. The district court determined that Dunsmore had failed to state a claim and that permitting Dunsmore to amend his complaint would be futile. Accordingly, the district court dismissed Dunsmore's complaint without prejudice. This appeal followed.

Dunsmore requests that we reverse and remand this case to be served on Defendants. Dunsmore takes issue with several points in the district court's order. He contends that (1) he adequately stated an equal protection claim; (2) he adequately stated a due process claim; (3) the district court should have allowed him to amend his complaint before dismissing it; and (4) the district court was biased against him and sought to prejudice this court against him. Separately, Dunsmore moves for appointment of counsel to handle this appeal.

## II.

"We review dismissal of a complaint under § 1915(e)(2)(B)(ii) *de novo*."[1] *Watkins v. Three Admin. Remedy Coordinators of the Bureau of Prisons*, 998 F.3d 682, 684 (5th Cir. 2021) (citing *Nyabwa v. Unknown Jailers at Corr. Corp. of Am.*, 700 F. App'x 379, 380 (5th Cir. 2017) (per curiam)). Dismissal under § 1915(e)(2)(B)(ii) is appropriate when the complaint fails "to state a claim to relief that is plausible on its face." *Id.* (quoting *Nyabwa*, 700 F. App'x at 380). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "This court affords *pro se* pleadings liberal construction. But even for *pro se* plaintiffs, . . . 'conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice' to state a claim for relief." *Coleman v. Lincoln Par. Det. Ctr.*, 858 F.3d 307, 309 (5th Cir. 2017) (per curiam) (footnote omitted) (quoting *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002)).

## III.

Dunsmore summarizes his appeal as a question of whether TCCC residents "are entitled to the investigatory oversight" and other services of TDFPS and THHS. Dunsmore would answer "yes," but the district court

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[1] Dismissals for frivolity under § 1915(e)(2)(B)(i) are reviewed for abuse of discretion, *Geiger v. Jowers*, 404 F.3d 371, 373 (5th Cir. 2005), but dismissals for both frivolity under subsection (i) and failure to state a claim under subsection (ii) receive *de novo* review, *Samford v. Dretke*, 562 F.3d 674, 678 (5th Cir. 2009) (per curiam). The district court did not specify whether it was dismissing Dunsmore's complaint under subsection (i) or (ii) in its order, but the district court noted in its final judgment that it dismissed Dunsmore's complaint "for failure to state a claim upon which relief can be granted," making *de novo* review appropriate.

said "no." As listed above, Dunsmore challenges four points from the district court's order. We consider each in turn.

A.

First, Dunsmore contends that the district court erred by dismissing his equal protection claim. He argues that he should not be required to use the TCCO grievance procedure to elevate his complaints about TCCC; instead, he should be able to file reports with TDFPS and THHS, like other similarly situated Texas citizens. He contends that Muth and Young's refusal to address his TCCC complaints violated his constitutional rights. We disagree.

To state an equal protection claim, "a § 1983 plaintiff must either allege that (a) a state actor intentionally discriminated against him because of membership in a protected class, or (b) he has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Gibson v. Tex. Dep't of Ins.*, 700 F.3d 227, 238 (5th Cir. 2012) (cleaned up). "The mere fact that a law impacts different individuals in different ways does not subject it to constitutional challenge unless" the law "is so extreme as to lack a rational basis." *Id.* at 239. If there is a "reasonably conceivable" set of facts that "could provide a rational basis" for the law's classification, there is no equal protection violation. *Id.* (quoting *Heller v. Doe*, 509 U.S. 312, 320 (1993)).

Dunsmore does not allege that he is in a protected class. He asserts that he should be treated like other Texas citizens who can file complaints with TDFPS and THHS. The district court found that Dunsmore was not similarly situated to other Texas citizens because he is civilly committed as an SVP. As such, Dunsmore was required to file a grievance with TCCO, rather than a report with TDFPS or THHS. This different treatment clearly flows from Dunsmore's status as a civilly committed individual at

TCCC, and it has a rational basis. It is "reasonably conceivable" that Texas has a legitimate interest in streamlining TCCC residents' grievances within the TCCO system. *Id.* For example, concentrating TCCC complaints may allow reviewers to identify problematic patterns more easily; the reviewers may have more exposure to TCCC operations that would provide important context in considering complaints; TDFPS and THHS may not have the capacity to hear additional complaints; etcetera. Thus, Dunsmore failed to state an equal protection claim, and the district court did not err by dismissing this count.

B.

Second, Dunsmore contends that the district court erred by dismissing his due process claim. Dunsmore appears to allege both procedural and substantive due process violations. We agree with the district court that Dunsmore failed to state a claim on either standard.

i.

To state a procedural due process claim, a plaintiff must show "a protected liberty or property interest" and then show that the state has failed to provide "adequate procedures for the vindication of that interest." *Jordan v. Fisher*, 823 F.3d 805, 810 (5th Cir. 2016) (citing *Wilkinson v. Austin*, 545 U.S. 209, 213 (2005)). Protected liberty interests may arise from the Constitution or from state law or policy. *Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 230 (5th Cir. 2020). Examples of constitutional liberty interests include freedom from bodily restraint, the right to contract, and the right to marry, while "state-created liberty interests are 'generally limited to freedom from restraint.'" *Id.* (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)). Cognizable property interests, such as welfare payments and continued employment, do not derive from the Constitution. *Id.* They are instead

created by "an independent source such as state law." *Id.* (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)).

Dunsmore has failed to identify a protected liberty or property interest. Dunsmore shares five sets of facts that he claims give rise to a due process claim: (1) a TCCO employee made a clerical error that led to him being "criminally extorted" for over $3,100; (2) he has damage to his eye that TCCO has not treated; (3) medical equipment at TCCC is not properly cleaned and maintained; (4) TCCC is denying him requested medication; and (5) he is not receiving industry-standard medical care. None is sufficient to state a claim.

As to his allegations regarding inadequate medical treatment, the district court noted that Dunsmore should raise those issues in a separate § 1983 action against the proper defendants in the proper venue. Dunsmore does not challenge that finding, and it is not clear how Muth or Young would be responsible for Dunsmore's medical care, nor how they could provide Dunsmore any relief in that area. Dunsmore did not allege any facts about TCCC failing to maintain its medical equipment or denying him certain medications in his complaint. Dunsmore also failed to include any facts about the alleged extortion in his complaint and instead only made vague references to extortion. Issues not raised before the district court are not properly before us on appeal. *See United States v. Joseph*, 102 F.4th 686, 691 (5th Cir. 2024) ("If an argument is not raised to such a degree that the district court has an opportunity to rule on it, we will not address it on appeal." (quoting *F.D.I.C. v. Mijalis*, 15 F.3d 1314, 1327 (5th Cir. 1994))). Still, even if Dunsmore had included those facts in his complaint, they would not have changed the outcome. Dunsmore does not connect any of the five scenarios to a liberty or property interest created by the Constitution or state law, nor does he explain how Muth or Young could provide any relief relating to these issues.

Separately, Dunsmore states that "commitment for any purpose constitutes [a] significant deprivation of liberty." But Dunsmore did not challenge his confinement before the district court, nor does he challenge the validity of his civil commitment here. In a separate filing before us, Dunsmore indicates that he is contesting his underlying convictions, and possibly his commitment, in other cases with the assistance of counsel. And even if Dunsmore had adequately alleged that his commitment implicates a protected liberty interest, he has not argued that the state lacks adequate procedures to vindicate that interest. *See Richardson*, 978 F.3d at 229.

Additionally, while only implicitly challenged in Dunsmore's brief, we note that the district court liberally construed Dunsmore's complaint as alleging a liberty interest in having his TCCC complaints investigated by TDFPS and THHS. On appeal, Dunsmore does not identify any constitutional provisions, state laws, or policies that could create a protected interest in specific agency investigations. In his complaint, Dunsmore pointed to TDFPS's and THHS's mission statements and related principles and policies, which generally provide that those agencies can investigate certain reports of wrongdoing. But none of the cited provisions creates a cognizable liberty or property interest; they simply authorize and describe certain agency functions.

On the second due process prong—whether the state's procedures are inadequate—Dunsmore argues that he has not had a full and fair opportunity to present his complaints about how he and other TCCC residents are treated and that THHS has failed to return his calls in a timely manner. He also argues that the TCCO grievance system is flawed because the agency regulates itself and is motivated to conceal abuses and complaints

in order to secure its funding.[2] Without a protected liberty or property interest, these allegations cannot carry a procedural due process claim. *See id.*

ii.

"Substantive due process protects individual liberty against certain government actions regardless of the fairness of the procedures used to implement them." *Franklin v. United States*, 49 F.4th 429, 435 (5th Cir. 2022) (internal quotation marks omitted) (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992)). "[I]n order to state a viable substantive due process claim[,] the plaintiff must demonstrate that the state official acted with culpability beyond mere negligence." *McClendon v. City of Columbia*, 305 F.3d 314, 325 (5th Cir. 2002) (en banc) (per curiam). The Supreme Court has "repeatedly emphasized that 'only the most egregious official conduct can be said to be arbitrary in the constitutional sense,'" meaning that actionable official conduct must "shock[] the conscience." *Id.* at 325–26 (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)).

Dunsmore argues that he can show "egregious official misconduct of an arbitrary and capricious and even . . . criminal nature" by individuals at TCCC and TCCO. Even construing Dunsmore's filings liberally, he failed to plead a substantive due process claim. As a general matter, TDFPS and THHS's failure to investigate complaints about misconduct at TCCC does

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[2] Dunsmore also raises new theories and facts regarding the TCCO grievance procedure that he did not present at the district court. Dunsmore states that in March 2025, two months after the district court issued its order, he called THHS to report a wrongful death but did not receive a call back within 24 hours, and the TCCO officials on-site the next day seemed unconcerned about the resident's death. Dunsmore also argues for the first time that there is a conspiracy to prevent state agencies from investigating TCCC under 42 U.S.C. §§ 1985 and 1986. These allegations are not properly before us, so we do not consider them. *See Joseph*, 102 F.4th at 691.

not shock the conscience. As discussed above, there is a rational basis for limiting TCCC complaints to the TCCO grievance procedure. Dunsmore also specifically describes THHS failing to return his calls in a timely manner and the TCCO CFO purportedly stalling Dunsmore's progress through his program as examples of egregious conduct, but this conduct reduces to "mere negligence." *Id.* at 325. In sum, Dunsmore did not plead a viable due process claim, whether procedural or substantive.

C.

Third, Dunsmore contends that the district court should have let him amend his complaint before dismissing it.[3] The district court determined that dismissal was appropriate because Dunsmore had already pled his best case, and "further factual development [would] not cure his complaint's deficiencies." We agree.

Additional facts would not save Dunsmore's claims, which fail for the legal reasons discussed above. We also note that the district court dismissed the complaint without prejudice and even encouraged Dunsmore to file a new case against "the appropriate defendants in a separate complaint in a court with proper venue." Because dismissal was without prejudice and amendment would have been futile, the district court did not commit reversible error by dismissing Dunsmore's complaint. *See Brown*, 842 F. App'x at 949–50 (affirming dismissal of *pro se* complaint where amendment

[3] Dunsmore also asserts that dismissing his case without a hearing implicates due process concerns. There is no requirement that a judge hold a hearing before dismissing a case under § 1915(e). *See Aucoin v. Terrebonne Par. Sheriff's Off.*, No. 21-30322, 2022 WL 16657429, at *2 (5th Cir. Nov. 3, 2022) (per curiam) ("[T]he district court properly complied with the mandatory requirements of § 1915(e)(2) and § 1915A(b) by screening and dismissing the case without holding a hearing . . . ."); *Brown v. Brown*, 842 F. App'x 948, 950 (5th Cir. 2021) (per curiam) ("[T]here is no requirement that a district court conduct a hearing before dismissal.").

would be futile); *Bazrowx v. Scott*, 136 F.3d 1053, 1054–55 (5th Cir. 1998) (per curiam) (holding that any error in dismissing a *pro se* complaint without permitting amended pleadings is harmless "if the plaintiff has alleged his best case, or if the dismissal was without prejudice" (footnote omitted)).

D.

Fourth and finally, Dunsmore contends that the district court was biased against him and sought to prejudice this court against him by repeatedly referring to Dunsmore as an SVP. The district court described Dunsmore that way because his status as a civilly committed SVP was relevant to the district court's analysis. Although Dunsmore does not formally move for recusal, recusal requires that a district judge's bias "be personal, as distinguished from judicial, in nature." *United States v. Scroggins*, 485 F.3d 824, 830 (5th Cir. 2007) (quoting *Phillips v. Joint Legis. Comm. on Performance & Expenditure Rev. of State of Miss.*, 637 F.2d 1014, 1020 (5th Cir. Unit A Feb. 1981)). Claims of bias based on adverse judicial rulings require "such a high degree of antagonism as to make fair judgment impossible." *Id.* Nothing in the district court's order or Dunsmore's appeal indicates that the district court held a personal bias towards Dunsmore, much less bias that would "make fair judgment impossible." *Id.* Dunsmore failed to state a claim for relief, and the district court did not err in dismissing Dunsmore's complaint.

IV.

Separately, Dunsmore requests that the court appoint an attorney to handle his appeal. Courts are not required to appoint counsel in a civil rights case unless it "presents exceptional circumstances." *Ulmer v. Chancellor*, 691 F.2d 209, 212 (5th Cir. 1982). Dunsmore contends that such circumstances exist because his case is consequential for all TCCC residents, and he does not have the expertise or capacity to handle this

litigation himself. Dunsmore says that this appeal "would most likely push [him] beyond [his] physical and mental capabilities." But this appeal is not proceeding any further. Additionally, Dunsmore asserts that he has retained attorneys to handle related claims concerning TCCO in a separate case. Dunsmore states that his attorneys are challenging his treatment at TCCC and his underlying convictions, among other issues. Given our decision to affirm the district court's dismissal order and Dunsmore's apparent ability to secure private attorneys to litigate similar—if not the same—claims, exceptional circumstances warranting appointed counsel are not present here. *See Williams v. Ballard*, 466 F.3d 330, 335 (5th Cir. 2006) (per curiam) (denying motion to appoint counsel in opinion affirming dismissal).

V.

For the reasons discussed above, the district court's judgment is AFFIRMED. Dunsmore's motion for appointment of counsel is DENIED.