

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 18, 2022

Lyle W. Cayce
Clerk

No. 21-60718
Summary Calendar

DEAN C. BOYD,

Plaintiff—Appellant,

versus

BARRY SPENCER, *Physical Therapist*; MEDICAL DOCTOR J.
GLISSON,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 4:21-CV-35

Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Dean C. Boyd, Mississippi prisoner # 167698, moves to proceed in forma pauperis (IFP) from the sua sponte dismissal with prejudice of his 42 U.S.C. § 1983 complaint for failure to state a claim. The district court denied

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Boyd leave to proceed IFP on appeal on the basis that he did not qualify as a pauper. A movant seeking IFP status must show both financial eligibility and a nonfrivolous issue for appeal. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982).

The record supports that Boyd qualifies financially to proceed IFP in this appeal. *See Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948). Boyd also has raised a nonfrivolous issue for appeal. *See Carson*, 689 F.2d at 586. He asserts that the district court erred in sua sponte dismissing his § 1983 complaint without first conducting a *Spears* hearing.¹ Boyd also contends that he has alleged that the defendants were deliberately indifferent to his serious medical needs.

Before dismissing a pro se litigant's case for failure to state a claim, a district court ordinarily must give the litigant an opportunity to amend his complaint to remedy the deficiencies, which is primarily done by conducting a *Spears* hearing or requesting a more definite statement via a questionnaire. *See Brown v. Taylor*, 829 F.3d 365, 370 (5th Cir. 2016); *Eason v. Thaler*, 14 F.3d 8, 9 (5th Cir. 1994). Such notice and opportunity are unnecessary if the facts alleged are "fantastic or delusional scenarios" or if the legal theory upon which a complaint relies is "indisputably meritless." *Eason*, 14 F.3d at 9 n.5 (internal quotation marks and citation omitted). Also, sua sponte dismissal without notice may be permissible "if the dismissal is without prejudice, or if the plaintiff has alleged his best case." *Brown*, 829 F.3d at 370. However, if a plaintiff's allegations may pass muster with further factual development and specificity, we will remand to give him a chance to offer a more detailed set of factual claims. *Eason*, 14 F.3d at 10.

¹ *Spears v. McCotter*, 766 F.2d 179, 181-82 (5th Cir. 1985), *overruled on other grounds by Neitzke v. Williams*, 490 U.S. 319 (1989).

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Here, regardless of whether Boyd can ultimately prevail on the merits of his claims of deliberate indifference, the facts alleged are not fantastic or delusional, and the legal theories asserted are not indisputably meritless. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Eason*, 14 F.3d at 9 n.5. The district court's dismissal was with prejudice, and we cannot conclude that Boyd alleged his best case. *See Brown*, 829 F.3d at 370.

In light of the foregoing, Boyd's motion for leave to proceed IFP is GRANTED, the district court's judgment dismissing his § 1983 complaint for failure to state a claim is VACATED, and this case is REMANDED for further proceedings consistent with this opinion.