United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
May 8, 2026
Lyle W. Cayce
Clerk

No. 25-20401
Summary Calendar

TANITA MITCHELL, *Individually and as Parent and Next Friend of J.M., Minor Child*; J. M., *a Minor Child*,

Plaintiffs—Appellants,

versus

CONROE INDEPENDENT SCHOOL DISTRICT,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:24-CV-3549

Before RICHMAN, SOUTHWICK, and WILLETT, *Circuit Judges*.

PER CURIAM:[*]

Appellant Tanita Mitchell, as next friend of her minor child J.M., appeals the district court's dismissal of her claims against Conroe Independent School District and denial of leave to amend. We affirm.

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

I

We take the facts alleged in the complaint as true in considering this motion to dismiss.[1] J.M. is an African-American student in the Conroe Independent School District ("District") who receives special education services. Another student, Student S, who also received special education services at J.M.'s school, began shaving his head and making racially charged comments to African-American students, including J.M. Beginning in the Fall of 2021, Student S began to pick physical fights with J.M. and other African-American students, witnessed by teachers and staff.

Around that time, Student S called a group of students, including J.M., a racial slur in front of a school coach, prompting a fight. Later, in September of 2022, Student S approach J.M. in the bathroom and attempted to provoke a fight before pushing J.M. and ultimately kicking him in the groin. J.M. required emergency surgery to remove a testicle.

Tanita Mitchell, as a plaintiff and as J.M.'s parent and next friend, sued the District alleging equal protection violations under 42 U.S.C. § 1983, violations of Title VI of the Civil Rights Act of 1964, and disability discrimination in violation of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. The District filed a motion to dismiss. Mitchell responded by filing an amended complaint. The District filed a motion to dismiss the amended complaint.

The district court held an initial conference and set a briefing schedule for the motion to dismiss. The court stayed discovery until it could rule on the motion. After the parties filed their briefs, the district court granted the

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[1] *Patterson v. MacDougall*, 506 F.2d 1, 3 (5th Cir. 1975).

District's motion to dismiss, denied Mitchell's request for leave to amend, and dismissed Mitchell's claims with prejudice. Mitchell timely appealed.

II

"We review 'de novo a district court's grant or denial of a Rule 12(b)(6) motion to dismiss, accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff.'"[2] "Under this standard '[d]ismissal is appropriate when the plaintiff has not alleged enough facts to state a claim to relief that is plausible on its face and has failed to raise a right to relief above the speculative level.'"[3]

A

We begin with Mitchell's Fourteenth Amendment equal protection claims and her individual due process claim under § 1983. Mitchell makes no arguments before this court that the district court erred in dismissing these claims. Mitchell has therefore forfeited any challenge to the dismissal of these claims.[4]

B

We next consider Mitchell's Title VI claim. "A school district receiving federal funds may be liable for student-on-student harassment if (1) the harassment was 'so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to [the] educational opportunities

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[2] *Hines v. Alldredge*, 783 F.3d 197, 200-01 (5th Cir. 2015) (internal quotation marks omitted) (quoting *True v. Robles*, 571 F.3d 412, 417 (5th Cir. 2009)), *abrogated on other grounds as recognized by Hines v. Quillivan*, 982 F.3d 266, 271-72 (5th Cir. 2020).

[3] *Shakeri v. ADT Sec. Servs., Inc.*, 816 F.3d 283, 290 (5th Cir. 2016) (alteration in original) (internal quotation marks omitted) (quoting *True*, 571 F.3d at 417).

[4] *See Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021) ("A party forfeits an argument . . . by failing to adequately brief the argument on appeal.").

or benefits provided by the school' (a racially hostile environment), and the district (2) had actual knowledge, (3) had 'control over the harasser and the environment in which the harassment occurs,' and (4) was deliberately indifferent."[5]

The district court held that this claim failed because Mitchell did not adequately plead the District had actual knowledge. The court further held in the alternative that, "[e]ven were the Court to credit Plaintiffs' vague and speculative allegations that appropriate officials had actual knowledge of Student S's bullying of J.M., Plaintiffs still fail to meet their burden to allege deliberate indifference."

On appeal, Mitchell argues only that she adequately alleged deliberate indifference and makes no arguments whatsoever regarding the actual knowledge element of her claim. Even after the District suggested the issue was forfeited in its brief, Mitchell still presents no arguments regarding actual knowledge in her reply brief. She has therefore forfeited any challenge to the district court's holding that she failed to plead actual knowledge.[6] Because she does not challenge the holding that an essential element of her claim failed, her Title VI claim was properly dismissed.[7]

C

Finally, we consider Mitchell's 504 and ADA claims. To establish a prima facie case of discrimination under either statute, a plaintiff must show:

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[5] *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 408 (5th Cir. 2015) (quoting *Davis ex rel. Lashonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 644, 650 (1999)).

[6] *See Rollins*, 8 F.4th at 397.

[7] *See Carter v. PennyMac Loan Servs., L.L.C.*, No. 22-20327, 2022 WL 17817953, at *1 (5th Cir. Dec. 20, 2022) (unpublished) ("Because [the plaintiff] does not challenge that holding, she cannot show that the district court erred by dismissing her claim . . . .").

> "(1) that he is a qualified individual . . . ; (2) that he is being excluded from participation in, or being denied benefits of, services, programs, or activities for which the public entity is responsible, or is otherwise being discriminated against by the public entity; and (3) that such exclusion, denial of benefits, or discrimination is by reason of his disability."[8]

Mitchell first brings a claim based on deliberate indifference to student-on-student disability harassment. Proving such a claim requires showing

> "(1) he was an individual with a disability, (2) he was harassed based on his disability, (3) the harassment was sufficiently severe or pervasive that it altered the condition of his education and created an abusive educational environment, (4) defendant knew about the harassment, and (5) defendant was deliberately indifferent to the harassment."[9]

Mitchell fails to adequately allege her prima facie case because she alleges only that J.M. was harassed based on his race, not that he was harassed based on his disability.

Mitchell also brings a failure to accommodate claim. To sustain this claim, Mitchell must show the "school district has *refused* to provide reasonable accommodations for the handicapped plaintiff to receive the full benefits of the school program."[10] The district court held:

> Because Plaintiffs have failed to plausibly allege [the District] had actual knowledge of Student S's conduct, it follows that

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[8] *J.W. v. Paley*, 81 F.4th 440, 449 (5th Cir. 2023) (alteration in original) (quoting *T.O. v. Fort Bend Indep. Sch. Dist.*, 2 F.4th 407, 417 (5th Cir. 2021)).

[9] *Doe v. Columbia-Brazoria Indep. Sch. Dist.*, 855 F.3d 681, 690 (5th Cir. 2017) (quoting *Estate of Lance v. Lewisville Indep. Sch. Dist.*, 743 F.3d 982, 996 (5th Cir. 2014)).

[10] *Id.* (quoting *D.A. ex rel. Latasha A. v. Hous. Indep. Sch. Dist.*, 629 F.3d 450, 454 (5th Cir. 2010)).

> they have failed to plausibly allege [the District] knew constant supervision was necessary to keep J.M. safe and then refused to provide that supervision. The allegation that J.M. was unsupervised at the time of the attack does not demonstrate that [the District] refused to provide J.M. an accommodation it knew was necessary for him to receive the full benefits of the school program.

Here again, Mitchell's failure to challenge the district court's holding of no actual knowledge is dispositive. Mitchell has forfeited her challenge to the denial of the failure to accommodate claim.

Because both theories Mitchell asserts fail, dismissal of her 504 and ADA claims was proper.

III

Finally, Mitchell argues that the district court abused its discretion in denying her leave to amend. "We review a district court's denial of leave to amend for abuse of discretion."[11] "A district court has the discretion to consider numerous factors in evaluating whether to allow amendment, including the futility of amending, the party's repeated failure to cure deficiencies by previous amendments, undue delay, or bad faith."[12]

The district court denied Mitchell's request for leave to amend because it found "Plaintiffs have already had an opportunity to amend because they filed an Amended Complaint after being made aware of the grounds for Defendants' Motion to Dismiss. Had Plaintiffs been able in good faith to plead facts required to state their claims, they could have done so in

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[11] *Aldridge v. Miss. Dep't of Corr.*, 990 F.3d 868, 878 (5th Cir. 2021) (citing *Molina-Aranda v. Black Magic Enters., L.L.C.*, 983 F.3d 779, 784 (5th Cir. 2020)).

[12] *Id.*

the Amended Complaint. Therefore, the Court finds that Plaintiffs have already pleaded their best case and leave to amend is denied."

Mitchell argues before this court that denial of leave to amend was improper because the district court had stayed discovery, and she needs discovery in order to adequately plead her best case. However, before the district court, Mitchell argued only that "if the Court believes that Plaintiff has failed to state a claim upon which relief can be granted, in total or in part, then before granting the motion, Plaintiff should be given the opportunity to replead," citing a case for the proposition that "the 5th Circuit supports the premise that 'granting leave to amend is especially appropriate . . . when the trial court has dismissed the complaint for failure to state a claim.'" Mitchell made no argument regarding the stay of discovery before the district court. We therefore decline to consider this argument.[13]

Even if we were to consider this argument, Mitchell's contentions that she cannot adequately plead her claims without discovery only underscore that the district court did not abuse its discretion in denying her leave to amend. "Rule 8 marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions."[14] Given Mitchell acknowledges she is unable to further enhance her pleadings beyond the amendment that was already permitted, the district court did not abuse its discretion in finding she had already made her best case and denying her leave to amend.

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[13] *See Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021) ("A party forfeits an argument by failing to raise it in the first instance in the district court—thus raising it for the first time on appeal . . . ."); *see also Aldridge*, 990 F.3d at 878 (declining to "consider assertions that were not raised in the district court" in evaluating denial of leave to amend).

[14] *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

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For the foregoing reasons, we AFFIRM.