United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
April 30, 2026
Lyle W. Cayce
Clerk

No. 25-50098

KERRON LAVERN OTIS,

Plaintiff—Appellant,

versus

GENE MILLER, *Warden*; BRYAN COLLIER, *Executive Director, Texas Department of Criminal Justice*; TDCJ CID HEALTH LIAISON,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:24-CV-596

Before STEWART, ENGELHARDT, and DOUGLAS, *Circuit Judges*.

PER CURIAM:[*]

Texas Department of Criminal Justice (TDCJ) inmate Kerron Lavern Otis brought suit against warden Gene Miller, TDCJ executive director Bryan Collier, and the TDCJ health liaison (collectively, "TDCJ Officials"), alleging that other inmates in his pod spray fecal matter and burn fires, which pose risks to his physical health. According to his complaint, the

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

TDCJ Officials he named have failed to transfer him or intervene. We AFFIRM.

I

A

According to Otis's handwritten pro se complaint, he was moved to the TDCJ Hughes Unit on June 1, 2024.[1] In this unit, a group of inmates "burns fire[s]" and squirts "liquid feces" on a daily basis. Otis alleges that the smell of the feces is sickening and leads to health detriments. He also alleges that he takes several medications for "upper respiratory allergies and other issues," which have been impacted by the "black soot enter[ing] [his] lungs" from the fires in the unit. "[W]ardens and supervisors" do not take action against inmates who are burning fires and spraying feces. Since being moved to the Hughes Unit, Otis has filed three grievances regarding various conditions, including the feces and fires. He has also filed several requests for medical examinations and care, and the record indicates he received medical examinations and care when requested.

Otis contends generally that he "sent complaint letters" to TDCJ Director Collier requesting that he "order the wardens to force the supervisors and staff" to address the conditions and to transfer him out of the unit. He also sent a written complaint to warden Miller requesting that staff enforce TDCJ rules and requesting a transfer. Despite his requests to Collier and Miller, neither transferred him out of the unit or otherwise

[1] According to the record, Otis has since been moved out of the Hughes Unit. *See infra*.II.

addressed the conditions.[2] He also alleges that the TDCJ health liaison was aware of the continuous fires and declined to intervene by requesting a transfer for him or taking any other action.

B

On November 19, 2024, Otis brought suit in the Western District of Texas for monetary and injunctive relief, and requested *in forma pauperis* status. The district court notified Otis that his complaint could be dismissed pursuant to 28 U.S.C. § 1915(e) unless it received a more definite statement regarding his claims, and ordered him to file a response to its questionnaire. Pursuant to the order, Otis filed his responses. However, the district court ultimately dismissed the suit pursuant to 28 U.S.C. § 1915(e) for failure to state a claim.[3] The district court held that the claims against the TDCJ Officials in their official capacities were barred by Eleventh Amendment immunity. It also held that Otis did not allege personal involvement of the TDCJ Officials and that they could therefore not be

[2] At one point, Otis was moved to a different pod within the same unit. However, according to Otis, that transfer was insufficient because even in that pod, fires continue to "burn . . . daily."

[3] Because the district court dismissed Otis's claim prior to service of process, there was no opposition filed by the TDCJ Staff in the district court or on appeal.

found to be deliberately indifferent, nor could they be held liable under a theory of supervisory liability.[4] Otis timely appealed.

C

Since the district court dismissed Otis's complaint, Otis has been moved out of the Hughes Unit. In a letter dated June 2, 2025, Otis notified the district court of his change in address. In that letter, he specified that his address changed from the Hughes Unit to the Polunsky Unit. And a more recent search of the TDCJ website indicates that Otis has been moved again to the Bill Clements Unit. *See Inmate Information Search*, TDCJ, https://inmate.tdcj.texas.gov/InmateSearch/start (last visited Apr. 13, 2026).

II

We start with jurisdiction. We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 because the district court entered final judgment in this matter. We are assured that this dispute remains a case or controversy because even if Otis's claim for injunctive relief is moot based on his transfer out of the Hughes Unit, he could be entitled to relief in the form of his requested monetary damages. *See Ctr. for Biological Diversity, Inc. v. BP Am. Prod. Co.*, 704 F.3d 413, 425 (5th Cir. 2013) ("Mootness applies when

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[4] The district court issued two additional holdings. First, it held that Otis lacked constitutional entitlements to particular housing or resolution of his filed grievances. Otis did not challenge that holding on appeal. Second, it held that "to the extent that any of [Otis]'s claims pre-date November 8, 2022, such claims are barred by the statute of limitations." However, the district court did not address whether Otis's factual allegations about events occurring after that date are sufficient to state a claim within the statute of limitations, and we decline to make such a finding in the first instance. The record reflects that Otis complains of harms occurring after he was moved to the Hughes Unit in June 2024.

intervening circumstances render the court no longer capable of providing meaningful relief to the plaintiff.").

We next consider the appropriate standard of review. The district court dismissed Otis's complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim. Accordingly, in deciding this appeal, we apply a de novo standard of review. *Rogers v. Boatright*, 709 F.3d 403, 407 (5th Cir. 2013) ("A dismissal of a civil rights complaint for failure to state a claim is reviewed de novo, using the same standard applicable to dismissals under Federal Rule of Civil Procedure 12(b)(6)."). "Under that standard, a complaint fails to state a claim upon which relief may be granted when it does not contain 'sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). We liberally construe Otis's pro se briefing. *See Propes v. Quarterman*, 573 F.3d 225, 228 (5th Cir. 2009).

III

A

Otis first argues that the district court erred in holding that sovereign immunity applies to his claims against the TDCJ Officials in their official capacities. However, the district court was correct in holding that the TDCJ Officials are entitled to Eleventh Amendment immunity for his official-capacity claims for damages. *See* U.S. CONST. amend. XI; *Oliver v. Scott*, 276 F.3d 736, 742 (5th Cir. 2002). Thus, our remaining discussion considers only Otis's claims for injunctive relief and for monetary relief against the TDCJ Officials in their individual capacities.

B

Otis next argues that the district court erred in holding that he failed to state a claim that the TDCJ Officials are liable for unconstitutional

conditions of confinement, and in holding that he failed to state a claim that the TDCJ Officials are liable under a theory of supervisory liability.

"The Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (citation modified). Under the Eighth Amendment, prison officials must "take reasonable measures to guarantee the safety of . . . inmates." *Id.* (quoting *Hudson v. Palmer*, 468 U.S. 517, 526–27 (1984)). There are two requirements to establish an unconstitutional condition of confinement. "First, the deprivation alleged must be, objectively, 'sufficiently serious.'" *Id.* at 834 (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)). A "substantial risk of serious harm" is sufficient. *Garrett v. Lumpkin*, 96 F.4th 896, 898 (5th Cir. 2024). Second, "a prison official must have a 'sufficiently culpable state of mind,'" that is, they must be deliberately indifferent. *Farmer*, 511 U.S. at 834 (quoting *Wilson*, 501 U.S. at 297); *see also Alexander v. Tex. Dep't of Crim. Just.*, 951 F.3d 236, 241 (5th Cir. 2020) (per curiam). "To establish deliberate indifference, . . . the prisoner must show both that (1) the official was aware of facts from which the inference could be drawn that a substantial risk of serious harm existed, and (2) the official drew the inference." *Alexander*, 951 F.3d at 241 (citation modified) (citing *Farmer*, 511 U.S. at 837). This is an "extremely high standard to meet." *Domino v. Tex. Dep't of Crim. Just.*, 239 F.3d 752, 756 (5th Cir. 2001).

1

Otis alleges that he faces unconstitutional conditions of confinement, specifically by being housed with and near other inmates who daily spray feces and burn fires. The district court held that he failed to plead that any of the named Defendants were personally involved in the alleged constitutional violations, or had personal knowledge of the alleged constitutional violations. The district court explained that without any information about the

Defendants' personal involvement or knowledge, Otis could not meet his burden of showing that the TDCJ Staff knew of the conditions or drew inferences regarding the nature of the risk posed by the conditions. We agree. Our review of the record supports the district court's conclusion, particularly in light of the demanding nature of the deliberate indifference standard. *See id.*

Attached to Otis's complaint and more definite statement were several grievance forms filed while he was housed in the Hughes Unit, which Otis argues are sufficient to satisfy his burden.[5] In September 2024, Otis filed two grievances. The first grievance requested removal from a diversion program. It was responded to by "T. Matz," who answered that Otis had since been discharged from the program. The second grievance stated that Otis had complained about the feces- and fire-related conditions, asked to be moved, and requested that the wardens take action to stop other inmates' behaviors. Otis requested that he be removed from the unit. The grievance response, signed by "J. Back," stated that Otis was moved to a different pod in the unit. In October 2024, Otis filed a third grievance stating that "security and the wardens" were not taking action to stop other inmates from spraying feces and burning fires. Otis asked that "crime scene investigation" start, that damage to TDCJ property be paid for, and that the wardens be told to

[5] According to Otis's complaint, and other grievances attached to the complaint, Otis also submitted two grievances in 2022 regarding his conflicts with "bisexual gang members." It appears that these grievances were filed while Otis was housed in the Bill Clements Unit, as his unit is described on both forms as "BC." The grievances were responded to in writing by "Teresa Martinez" and "J. Back." In August 2022, Otis submitted another grievance about the feces- and fire-related conditions and asked that the pods be cleaned more regularly. The grievance was responded to by "T. Martinez," who stated that the pods are cleaned but there are not enough staff and so they are "used when available."

"stop." The response, signed by "A. Gerfen, UGI-II," stated that the issue is not grievable.

Also attached to Otis's complaint are several inmate requests from September through November 2024 requesting medical examinations and mental health support due to his smoke exposure. The written responses indicate that Otis was seen by nursing and mental health as requested. The responses with legible names and signatures are signed by "M. Vinduska RN."[6]

As mentioned *supra*, Otis has been moved out of the Hughes Unit; he is now housed in the Bill Clements Unit. Thus, he is no longer subject to the conditions he complains of at the Hughes Unit. And to the extent he seeks damages against Miller, Collier, and the TDCJ health liaison in their individual capacities, his pleadings do not explain how any of the actions of those TDCJ Officials could satisfy the demanding deliberate indifference standard. *See Domino*, 239 F.3d at 756. In reviewing the grievances attached to Otis's filings and discussed *supra*, the district court notified Otis that he needed to provide allegations sufficient to state that the named Defendants *themselves* had been deliberately indifferent to the conditions at the Hughes Unit. That means Otis must carry his burden of showing that each named defendant was (1) aware of the conditions that existed in the Hughes Unit, and (2) drew the inference that those conditions created a "substantial risk of serious harm." *See Alexander*, 951 F.3d at 241 (citing *Farmer*, 511 U.S. at 837).

The grievance forms filed by Otis are insufficient to state a claim of deliberate indifference. None of the forms indicate that the TDCJ Officials were aware of the conditions in the Hughes Unit. Each grievance was

[6] At least one response does not contain any legible name or signature.

responded to by another person: T. Matz, J. Back, Annette Martinez, or A. Gerfen. Responses to the medical requests were signed by "M. Vinduska RN." None were signed by the named Defendants. Otis's only invocation of the named TDCJ Officials are his statements that he requested transfers from Miller and Collier, and that he "sent notice to the Sr. Warden [of his] complaint." However, the record does not reflect that any such requests were transmitted to, or received by, Miller or Collier. And Otis's only evidence of deliberate indifference specific to the health liaison is his conclusory allegation that the health liaison knew of the conditions and declined to step in. Such conclusory statements need not be accepted as true. *See Guidry v. Bank of LaPlace*, 954 F.2d 278, 281 (5th Cir. 1992) (explaining that in evaluating the propriety of dismissal, "[c]onclusory allegations and unwarranted deductions of fact are not admitted as true" (quoting *Associated Builders, Inc. v. Ala. Power Co.*, 505 F.2d 97, 100 (5th Cir. 1974)).

Thus, Otis's pleadings did not provide facts sufficient to show that he could meet the "extremely high standard" of deliberate indifference as to these Defendants. *See Domino*, 239 F.3d at 756.

2

Otis also argues that the district court erred in holding that he failed to state a claim that the TDCJ Officials could be held liable under a theory of supervisory liability. Our court has previously explained that "[u]nder section 1983, supervisory officials are not liable for the actions of subordinates on any theory of vicarious liability." *Thompkins v. Belt*, 828 F.2d 298, 303 (5th Cir. 1987). "However, a supervisor may be held liable if there exists either (1) his personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." *Id.* at 304 (explaining that if the supervisor did not himself knowingly cause the constitutional deprivation, he could only

be held liable if he knew of the unconstitutional condition, "failed to properly attempt to correct it," and caused the plaintiff's injuries).

The district court correctly stated and applied this law, explaining that the TDCJ Officials were not personally involved in the conditions, and had no policy that could be said to have caused Otis's injury. *See id.* On appeal, Otis argues only broadly that "officers and [the] entire staff were aware of the conditions" in the Hughes Unit. He points to his grievance forms, none of which were signed by the TDCJ Officials named in this suit. And he argues that the TDCJ Officials "shift blame" about the conditions in the Hughes Unit. But he offers no explanation as to how the TDCJ Officials were personally involved or caused his injuries. "Even a liberally construed pro se civil rights complaint . . . 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) (per curiam). Here, Otis has simply failed to set forth facts giving rise to a claim that the TDCJ Officials could be held liable based on supervisory liability.

IV

For the foregoing reasons, we AFFIRM.