

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Bailey v. Contra Costa County Jail Medical

Bailey · No. 25-cv-03252-PCP · Decided October 6, 2025

OPINION

Bailey v. Contra Costa County Jail Medical

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 TERRY R. BAILEY, Case No. 25-cv-03252-PCP 8 Plaintiff, ORDER DISMISSING
COMPLAINT

WITH LEAVE TO AMEND,

9 v. GRANTING IN FORMA PAUPERIS

APPLICATIONS, AND DENYING

10 CONTRA COSTA COUNTY JAIL MOTION FOR PRO BONO COUNSEL

MEDICAL,

Re: Dkt. Nos. 2, 10, 12 11 Defendant. 12 13 Terry Bailey filed this pro se civil rights action under 42 U.S.C. § 1983 regarding events 14 which occurred while he was incarcerated in Contra Costa County, California. Dkt. No. 11 15 (“Complaint”). For the reasons stated below, the Complaint is dismissed with leave to amend. Mr. 16 Bailey’s motions to proceed in forma pauperis are granted, and his motion to be appointed pro 17 bono counsel is denied. 18 I. Background 19 At all relevant times, Mr. Bailey was incarcerated at a detention facility in Contra Costa 20 County, California. See generally Compl. As a defendant, Mr. Bailey names only “Contra Costa 21 County Jail Medical.” Id. at 2. 22 Mr. Bailey alleges that when he entered the detention facility he was “clean and healthy.” 23 Id. “The moment [he] started wearing inmate clothing [and] showering on M module,” he 24 developed a rash on his scrotum. Id. at 2–3. 25 Mr. Bailey sought medical treatment for the rash over a period of several months. At least 26 three doctors prescribed at least three treatments, none of which were effective. See id. at 3. 27 Approximately eight months after the rash appeared, Mr. Bailey was sent to a 1 another doctor. Mr. Bailey does not state whether this ointment was effective. See id. 2 As relief, Mr. Bailey seeks “compensation for gross negligence and pain and suffering.” Id. 3 II. Legal Standard 4 Federal courts must screen any case in which a prisoner seeks redress from a governmental 5 entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must 6 identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim 7 upon which relief may be

granted, or seek monetary relief from a defendant immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). III. Analysis 11 Mr. Bailey has not identified a cognizable defendant or alleged a cognizable claim. Leave 12 to amend is given so that he may do both. 13 A. Defendant 14 As noted above, Mr. Bailey named only “Contra Costa County Jail Medical” as a 15 defendant. To impose liability upon such an entity on the legal theories asserted in the complaint, 16 Mr. Bailey must establish: “(1) that he possessed a constitutional right of which he [] was 17 deprived; (2) that the [entity] had a policy; (3) that this policy amount[ed] to deliberate 18 indifference to the plaintiff’s constitutional rights; and (4) that the policy [was] the moving force 19 behind the constitutional violation.” *Oviatt By and Through Waugh v. Pearce*, 954 F.2d 1470, 20 1474 (9th Cir. 1992) (citations and quotation marks omitted) (explaining how a government 21 agency may be held liable under *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658 22 (1978)). If a plaintiff cannot identify an unconstitutional policy of the government agency, the 23 plaintiff must “produce evidence creating a triable issue of fact regarding the existence of an 24 unconstitutional practice or custom.” *Gordon v. Orange County*, 6 F.4th 961, 974 (9th Cir. 2021) 25 (no custom or practice was shown where the record lacked evidence of any other event involving 26 similar conduct or constitutional violations). “[A] single incident of unconstitutional activity is not 27 sufficient to impose liability under *Monell*.” *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823– 1 pursuant to an official policy or practice of the Contra Costa County Jail Medical Department. See 2 generally *Compl.* 3 Mr. Bailey may instead be able to state a claim against an individual who caused his rash 4 or failed to treat his rash. To do so, he must identify an individual defendant who is directly 5 responsible for his injury. “In a § 1983 suit ... each Government official, his or her title 6 notwithstanding, is only liable for his or her own misconduct.” *Ashcroft v. Iqbal*, 556 U.S. 662, 7 677 (2009). Under no circumstances is there liability under section 1983 on the theory that one is 8 responsible for the actions or omissions of another. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 9 1989) (“There is no respondeat superior liability under section 1983.”). It is insufficient for a 10 plaintiff generally to allege that supervisors knew about a constitutional violation and that they 11 generally created policies and procedures that led to the violation. *Hydrick v. Hunter*, 669 F.3d 12 937, 942 (9th Cir. 2012). 13 If Mr. Bailey chooses to amend, he either must identify a policy which caused his injury 14 or identify individual defendants who are responsible for his injury. 15 B. Claim 16 Mr. Bailey states that he wishes to sue for negligence. See *id.* at 3. This claim fails because 17 negligence is not actionable under § 1983 in the prison context. See *Farmer v. Brennan*, 511 U.S. 18 825, 835–36 & n.4 (1994); *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990) (holding an 19 allegation of gross negligence was insufficient to state a claim for denial of medical needs to 20 prisoner). 21 If he chooses to amend, Mr. Bailey may attempt to plead a claim for deliberate indifference 22 to a serious medical need rather than pleading a claim for negligence. ““The treatment a prisoner 23 receives in prison and the conditions under which he is confined are

subject to scrutiny under the 24 Eighth Amendment.” Farmer, 511 U.S. at 832 (citation omitted). The Eighth Amendment 25 requires prison officials to “ensure that inmates receive adequate food, clothing, shelter, and 26 medical care,” and to “take reasonable measures to guarantee the safety of the inmates.” Id. A 27 prison official violates the Eighth Amendment when two requirements are met: (1) the deprivation 1 sufficiently culpable state of mind. Farmer, 511 U.S. at 834 (citing Wilson v. Seiter, 501 U.S. 294, 2 297, 298 (1991)). Deliberate indifference to a prisoner’s serious medical needs violates the Eighth 3 Amendment’s proscription against cruel and unusual punishment. See Estelle v. Gamble, 429 U.S. 4 97, 104 (1976). A determination of “deliberate indifference” involves an examination of two 5 elements: the seriousness of the prisoner’s medical need and the nature of the defendant’s response 6 to that need. McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other 7 grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A 8 “serious” medical need exists if the failure to treat a prisoner’s condition could result in further 9 significant injury or the “unnecessary and wanton infliction of pain.” Id. (citing Estelle, 429 U.S. 10 at 104). 11 A claim of medical malpractice or negligence is insufficient to make out a violation of the 12 Eighth Amendment. See Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004).1 If Mr. Bailey 13 wishes to state a federal civil rights claim against a doctor at Contra Costa County Jail, he must 14 allege facts which meet the deliberate indifference standard. See Farmer, 511 U.S. at 832, 834. To 15 do so, Mr. Bailey must show that the doctor knew of and disregarded an excessive risk to Mr. 16 Bailey’s health or safety by failing to take reasonable steps to abate it. Id. at 837. Because Mr. 17 Bailey appears to have received timely treatment, Mr. Bailey also must “show that [the doctor’s] 18 chosen course of treatment ‘was medically unacceptable under the circumstances,’ and was chosen 19 ‘in conscious disregard of an excessive risk to [the prisoner’s] health,’” rather than constituting a 20 mere difference of medical opinion. Toguchi, 391 F.3d at 1058. 21 IV. Counsel Motion 22 Mr. Bailey’s request for appointment of pro bono counsel is DENIED. 23 First, Mr. Bailey does not identify exceptional circumstances which would warrant the 24 appointment of pro bono counsel. See Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) 25 (stating that a district court may appoint counsel in “exceptional circumstances”); see also Lassiter 26 v. Dep’t of Soc. Servs., 452 U.S. 18, 25 (1981) (explaining that there is no constitutional right to 27 1 counsel in a civil case). The fact that a pro se litigant would be better served with the assistance of 2 counsel does not necessarily qualify plaintiff to be appointed pro bono counsel. See Wilborn v. 3 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (that plaintiff may well have fared better with 4 assistance of counsel does not require appointment of counsel). Second, because Mr. Bailey has 5 not stated a cognizable claim or identified a cognizable defendant, at this time it does not appear 6 that Mr. Bailey’s lawsuit warrants counsel. 7 V. Conclusion 8 1. The Complaint does not state a cognizable claim against any defendant. The 9 Complaint is DISMISSED WITH LEAVE TO AMEND. If he truthfully can provide facts to 10 support a claim, Mr. Bailey may amend his claim. 11 2. The AMENDED COMPLAINT shall be filed within thirty-five days from the date 12 this order is

filed. The amended complaint must include the caption and civil case number used in 13 this order (25-cv-3252-PCP) and the words AMENDED COMPLAINT on the first page. In the 14 amended complaint, Mr. Bailey must allege facts that demonstrate he is entitled to relief on every 15 claim against every defendant. An amended complaint supersedes the original complaint. See 16 London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981) (“[A] plaintiff waives all causes 17 of action alleged in the original complaint which are not alleged in the amended complaint.”); 18 Ferdik v. Bonzelet, 963 F.2d 1258, 1262–63 (9th Cir. 1992) (where an amended complaint did not 19 name all the defendants to an action, they were no longer defendants). 20 3. It is Mr. Bailey’s responsibility to prosecute this case. He must keep the Court 21 informed of any change of address by filing a separate paper with the Clerk headed “Notice of 22 Change of Address.” He also must comply with the Court’s orders in a timely fashion. Failure to 23 do so will result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of 24 Civil Procedure 41(b). 25 4. Mr. Bailey is cautioned that he must include the case name and case number for 26 this case on any document he submits to the Court for consideration in this case. 27 5. Mr. Bailey’s motion to be appointed pro bono counsel is DENIED. Dkt. No. 10.] 6. Mr. Bailey’s motions to proceed in forma pauperis are GRANTED. See Dkt. Nos. 2 || 2, 12. The initial partial filing fee is \$10.00. See 28 U.S.C. § 1915(b)(1) (requiring a court to 3 assess an initial filing fee of 20 percent of a prisoner’s average monthly deposits or monthly 4 || balance, whichever is greater). A copy of this order and the attached instructions will be sent to 5 || Mr. Bailey via U.S. mail, and to the California Department of Corrections and Rehabilitation 6 || (CDCR) and the court’s financial office via email at trusthelpdesk@cdcr.ca.gov and 7 || CAND Finance@cand.uscourts.gov. 8 IT IS SO ORDERED. 9 Dated: October 6, 2025 10 Ze 1] b Cog lo P. Casey Pitt 12 United States District Judge «14 16 17 Oo Z 18 19 20 21 22 23 24 25 26 27 28 1 UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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INSTRUCTIONS FOR PAYMENT OF PRISONER’S FILING FEE

4 5 The prisoner shown as the plaintiff or petitioner on the attached order has filed a civil action in forma pauperis in this court and owes to the court a filing fee. Pursuant to 28 U.S.C. § 6 1915, the fee is to be paid as follows: 7 The initial partial filing fee listed on the attached order should be deducted by the prison trust account office from the prisoner’s trust account and forwarded to the clerk of the court as the 8 first installment payment on the filing fee. This amount is twenty percent of the greater of (a) the 9 average monthly deposits to the prisoner’s account for the 6-month period immediately preceding the filing of the complaint/petition or (b) the average monthly balance in the prisoner’s account for 10 the 6-month period immediately preceding the filing of the complaint/petition. 11 Thereafter, on a monthly basis, 20 percent of the preceding month’s income credited to the prisoner’s trust account should be deducted and forwarded to the

court each time the amount in the 12 account exceeds ten dollars (\$10.00). The prison trust account office should continue to do this 13 until the filing fee has been paid in full. 14 If the prisoner does not have sufficient funds in his/her account to pay the initial partial filing fee, the prison trust account office should forward the available funds, and carry the balance 15 forward each month until the amount is fully paid. If the prisoner has filed more than one 16 complaint, (s)he is required to pay a filing fee for each case. The trust account office should make the monthly calculations and payments for each case in which it receives an order granting in 17 forma pauperis and these instructions. 18 The prisoner's name and case number must be noted on each remittance. The initial partial filing fee is due within thirty days of the date of the attached order. Checks should be made 19 payable to Clerk, U.S. District Court and sent to Prisoner Accounts Receivable, U.S. District 20 Court, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102. 21 cc: Plaintiff/Petitioner Court's Finance Office 22 United States District Judge 23 24 25 26 27