

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Dunn v. Warden Ware State Prison

644 F. App'x 898 (11th Cir. 2016) · Decided February 25, 2016

SUMMARY

The Eleventh Circuit reviewed an interlocutory appeal from an order denying Cleveland Dunn’s request for a preliminary injunction and dismissing claims against some defendants. The court affirmed the denial of injunctive relief because Dunn had presented no evidence or requested an evidentiary hearing, and dismissed the remainder of the appeal for lack of appellate jurisdiction.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	Carnes; Pryor; Reeves
JURISDICTION	Federal
DECIDED	February 25, 2016
DISPOSITION	other
PROCEDURAL POSTURE	Interlocutory appeal from an order denying preliminary injunctive relief and dismissing claims against some, but not all, defendants under 28 U.S.C. § 1915A.
STANDARD OF REVIEW	Denial of a preliminary injunction is reviewed for abuse of discretion. The court independently considered whether it had appellate jurisdiction over the partial dismissal.
PRECEDENTIAL VALUE	Nonprecedential or unpublished federal appellate decision
PARTIES	Cleveland Dunn v. Warden Ware State Prison, Prison officials

TOPICS

- appellate jurisdiction
- interlocutory appeal
- injunctions
- mootness
- standard of review

PRACTICE AREAS

- Civil rights
- Federal appellate jurisdiction
- Prisoner litigation
- Preliminary injunctive relief

QUESTIONS PRESENTED

1. Whether the Eleventh Circuit had interlocutory appellate jurisdiction to review the dismissal of claims against some, but not all, defendants.
2. Whether the district court abused its discretion by denying Dunn's request for a preliminary injunction without supporting evidence or a request for an evidentiary hearing.
3. Whether Dunn's transfer from the prisons rendered his claims for injunctive relief moot.

HOLDINGS

1. An order dismissing claims against some, but not all, defendants is not a final judgment appealable as of right absent a proper Federal Rule of Civil Procedure 54(b) certification or another basis for appellate jurisdiction.
2. The express denial of a request for injunctive relief is appealable under 28 U.S.C. § 1292(a)(1).
3. The district court did not abuse its discretion in denying preliminary injunctive relief where the plaintiff merely requested relief in an unverified complaint and presented no supporting evidence or request for an evidentiary hearing.
4. A prisoner's transfer or release generally moots claims for injunctive and declaratory relief against officials at the former facility.

KEY QUOTATIONS

“The express denial of a request for injunctive relief is an appealable interlocutory order under 28 U.S.C. § 1292(a)(1).” (644 F. App'x at 898)

“Without admissions, evidence, or a request for an evidentiary hearing, there was nothing on which to base relief.” (644 F. App'x at 899)

FACTUAL BACKGROUND

Dunn alleged that officials at Ware State Prison and Calhoun State Prison were deliberately indifferent to his serious medical needs after a fellow inmate severely beat him. He sought preliminary injunctive relief in his complaint, but did not file a separate motion, submit supporting evidence, or request an evidentiary hearing during the eight months before the district court denied relief. By the time of the appeal, Dunn was no longer housed at either prison.

PROCEDURAL HISTORY

Dunn brought claims alleging that prison officials were deliberately indifferent to his serious medical needs after he was severely beaten by another inmate. The district court adopted the magistrate judge's report and recommendation, dismissed the claims against some defendants, denied preliminary injunctive relief against all defendants, and allowed the case to proceed against the remaining defendants. The Eleventh Circuit reviewed the denial of preliminary injunctive relief but dismissed the remainder of the appeal for lack of appellate jurisdiction because the order was not final and lacked Rule 54(b) certification.

DISPOSITION

other

REMAND INSTRUCTIONS

The court stated that its conclusion was without prejudice to Dunn moving for preliminary injunctive relief and an evidentiary hearing. It gave no direction regarding how the district court should proceed if such a motion were filed.

CASES CITED

- Supreme Fuels Trading FZE v. Sargeant, 689 F.3d 1244, 1246 (11th Cir. 2012)
- Citizens Concerned About Our Children v. School Board of Broward County, 193 F.3d 1285, 1289-90 (11th Cir. 1999)
- McDonald's Corp. v. Robertson, 147 F.3d 1301, 1312 (11th Cir. 1998)
- GeorgiaCarry.Org, Inc. v. U.S. Army Corps of Engineers, 788 F.3d 1318, 1322 (11th Cir. 2015)
- Smith v. Allen, 502 F.3d 1255, 1267 (11th Cir. 2007)
- Sossamon v. Texas, 563 U.S. 277, 131 S. Ct. 1651, 179 L. Ed. 2d 700 (2011)

OPINION

PER CURIAM.

PER CURIAM: This case concerns claims that prison officials at the Ware State Prison in Waycross, Georgia, and the Calhoun State Prison in Morgan, Georgia, were deliberately indifferent to Cleveland Dunn's serious medical needs after he suffered a severe beating by a fellow inmate. Dunn no longer is housed at either prison.

On August 11, 2014, the district court adopted the magistrate judge's report and recommendation over Dunn's objections and, pursuant to 28 U.S.C. § 1915A, dismissed Dunn's claims against some, but not all, defendants.

In the same order, the district court also denied Dunn's request for preliminary injunctive relief against all defendants. The case proceeded against the remaining defendants. Dunn appeals on an interlocutory basis the district court's August 11, 2014 order. Our jurisdiction over this interlocutory appeal is limited to review of the denial of Dunn's request for preliminary injunctive relief.

The express denial of a request for injunctive relief is an appealable interlocutory order under 28 U.S.C. § 1292(a)(1). The remainder of the August 11, 2014 order dismissing some but not all defendants is unreviewable for lack of jurisdiction. "[A]n order adjudicating fewer than all the claims in a suit, or adjudicating the rights and liabilities of fewer than all the parties, is not a final judgment from which an appeal may be taken, unless the district court properly certifies as 'final' under [Federal Rule of Civil Procedure] 54(b), a judgment on fewer than all claims or parties."

Supreme Fuels Trading FZE v. Sargeant, 689 F.3d 1244, 1246 (11th Cir.2012) (first alteration in original and internal quotation marks omitted).

The district court entered no Rule 54(b) certification for the order. And we find no other basis upon which to exercise jurisdiction over the dismissal of some of the defendants from this case. Accordingly, we review only the denial of Dunn's request for preliminary injunctive relief.

Under the circumstances, the district court did not abuse its discretion in denying the preliminary injunction.¹ Injunctive relief was requested only in the complaint and not by separate motion. In the 8 months after the complaint was filed and before the denial, Dunn had not separately requested injunctive relief. Nor had he put forward any evidence that would have entitled him to relief or requested an evidentiary hearing to prove his entitlement to it.

Because the complaint was not verified, its allegations could not be considered evidence supporting injunctive relief, and the defendants had not admitted any of the allegations that might have made out a case for preliminary injunctive relief. Without admissions, evidence, or a request for an evidentiary hearing, there was nothing on which to base relief. See *Citizens Concerned About Our Children v. Sch.*

Bd. of Broward Cty., 193 F.3d 1285, 1289-90 (11th Cir.1999) (explaining that the failure to request a hearing on preliminary injunctive relief undermines any conclusion that irreparable harm has been shown); *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1312 (11th Cir.1998) (holding that where the necessary facts are contested and credibility determinations must be made, relief cannot be granted without an evidentiary hearing).

It follows that there was no abuse of discretion in denying preliminary injunctive relief. Our conclusion is without prejudice to plaintiff moving for preliminary injunctive relief and an evidentiary hearing to show he is entitled to it.² We do not imply any views about how the district court should proceed if plaintiff does. See Fed.R.Civ.P. 65.

The denial of preliminary injunctive relief is **AFFIRMED**. The remainder of the appeal is **DISMISSED** for lack of appellate jurisdiction.. "We review the district court's denial of a preliminary injunction for abuse of discretion." *GeorgiaCarry.Org, Inc. v. U.S. Army Corps of Eng'rs*, 788 F.3d 1318, 1322 (11th Cir.2015)..

Because Dunn is no longer housed in either Ware State Prison or Calhoun State Prison, his claims for injunctive relief against the prison officials there are moot. See *Smith v. Allen*, 502 F.3d 1255, 1267 (11th Cir.2007) (recognizing the "general rule... that a transfer or a release of a prisoner from prison will moot that prisoner's claims for injunctive and declaratory relief"), abrogated on other grounds by *Sossamon v. Texas*, 563 U.S. 277, 131 S.Ct.

1651, 179 L.Ed.2d 700 (2011). Dunn could have a basis for injunctive relief against these defendants, however, if he gets transferred back into those prisons.

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