

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Kemmerly v. Hill

No. No. 20-3028, United States Court of Appeals for the Tenth Circuit (May 19, 2020)

SUMMARY

In this unpublished Tenth Circuit opinion, the court affirmed dismissal of a pro se pretrial detainee's § 1983 action against jail officials for failure to state a claim under 28 U.S.C. § 1915(e). The court held that the plaintiff's First Amendment claim for interference with outgoing mail to the media failed for lack of specific factual allegations, his Fourteenth Amendment excessive force claim lacked sufficient facts to show objectively unreasonable force, and his conditions-of-confinement claim failed because he did not allege personal participation by each defendant. The court also held that the plaintiff lacked standing to bring claims on behalf of other inmates, and his access-to-courts claim failed for lack of showing prejudice. The denial of his motion to appoint counsel was affirmed as not an abuse of discretion.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Scott M. Matheson, Jr.; Paul J. Kelly, Jr.; Allison H. Eid
JURISDICTION	Federal
DECIDED	May 19, 2020
DOCKET	No. 20-3028
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Kansas from dismissal of amended complaint under 28 U.S.C. § 1915(e) and denial of motion to appoint counsel.
STANDARD OF REVIEW	De novo review for the dismissal, using the same standard as Federal Rule of Civil Procedure 12(b)(6); abuse of discretion review for the denial of appointed counsel.
PRECEDENTIAL VALUE	unpublished
PARTIES	Christopher Daniel Kemmerly v. Braden Hill, et al.

TOPICS

civil rights

prisoners rights

section 1983

motions to dismiss

civil procedure

standard of review

due process

first amendment

standing

PRACTICE AREAS

Civil Rights

Prisoner Litigation

Constitutional Law

QUESTIONS PRESENTED

1. Whether the district court properly dismissed Mr. Kemmerly's First Amendment claim that jail officials interfered with his outgoing mail to the news media.
2. Whether the district court properly dismissed Mr. Kemmerly's Fourteenth Amendment excessive force claim under § 1983.
3. Whether the district court properly dismissed Mr. Kemmerly's cruel and unusual punishment claim for failure to allege personal participation by named defendants.
4. Whether Mr. Kemmerly had standing to assert claims on behalf of other inmates or the inmate population generally.
5. Whether the district court properly dismissed Mr. Kemmerly's due process claim for denial of access to counsel and courts.
6. Whether the district court abused its discretion in denying Mr. Kemmerly's motion to appoint counsel.

HOLDINGS

1. The district court properly dismissed the First Amendment claim because Kemmerly alleged only a bald conclusion that his letter was seized, without specific factual allegations to support a plausible claim.
2. The district court properly dismissed the excessive force claim because Kemmerly failed to allege sufficient facts to show that the force used was objectively unreasonable under the Fourteenth Amendment standard.
3. The district court properly dismissed the conditions-of-confinement claim because Kemmerly failed to allege personal participation by any named defendant.
4. The district court properly dismissed the due process claim because Kemmerly failed to show that any denial of access prejudiced him in pursuing litigation.
5. The district court did not abuse its discretion because Kemmerly failed to assert a colorable claim and the action was not a class action.

KEY QUOTATIONS

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" (at 9)

"The Fourteenth Amendment 'Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment.'" (at 10)

“In order for liability to arise under § 1983, a defendant's direct personal liability for the claimed deprivation of a constitutional right must be established.” (at 12)

FACTUAL BACKGROUND

Christopher Kemmerly, a pretrial detainee at the Sedgwick County Adult Detention Facility, sued jail officials under 42 U.S.C. § 1983 after a fellow inmate, Joshua Moore, committed suicide despite Kemmerly's warning to a deputy. Kemmerly prepared a written record of events and mailed it to KAKE-TV, but he alleged officers seized it, then battered him on two occasions, denied him attorney access, and subjected him to abusive conditions. The district court dismissed his amended complaint for failure to state a claim, and he appealed.

PROCEDURAL HISTORY

The district court dismissed Kemmerly's amended complaint under 28 U.S.C. § 1915(e) for failure to state a claim, denied his motion for reconsideration, and denied his motion to appoint counsel. Kemmerly appealed the dismissal and the denial of counsel, but did not appeal the denial of reconsideration.

DISPOSITION

affirmed

CASES CITED

- Mayfield v. Bethards, 826 F.3d 1252 (10th Cir. 2016)

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