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MICHAEL S. POLLICE, Plaintiff-Appellant, v. JAMES DOUGAN, Sheriff, Kent County Correctional Facility, in his official capacity, Defendant-Appellee.

No. 99-2188

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

2000 U.S. App. LEXIS 23496

September 14, 2000, Filed

NOTICE: [*1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 28(g) LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28(g) BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

SUBSEQUENT HISTORY: Reported in Table Case Format at: *2000 U.S. App. LEXIS 30405*.

PRIOR HISTORY: Western District of Michigan. 98-00844. Quist. 8-31-99.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff prisoner appealed the judgment of the United States District Court for the Western District of Michigan, which dismissed plaintiff's civil rights complaint.

OVERVIEW: Plaintiff prisoner filed a civil rights complaint for monetary damages and injunctive relief against defendant sheriff in connection with injuries plaintiff allegedly suffered while he was incarcerated at the county facility. The district court dismissed the complaint pursuant to 28 U.S.C.S. § 1915(e)(2) for failing to state a claim. The district court noted that any claim for injunctive relief had been mooted out by plaintiff's subsequent transfer to another place of confinement, and that any claim for monetary damages against defendant in his official capacity must have been dismissed as plaintiff did not allege that the violation took place as a direct result of a county policy or custom. On appeal, the court found that the district court properly held that plaintiff's claims for injunctive relief did not survive his relocation to another prison. In addition, to

have sustained a suit against defendant acting in his official capacity, plaintiff had to have shown that his injuries were caused by an unconstitutional policy or custom of the county. Plaintiff's complaint made no such allegation.

OUTCOME: Judgment affirmed; plaintiff did not allege that his injuries were caused by an unconstitutional policy or custom of the county, and plaintiff's claims for injunctive relief did not survive his relocation to another prison.

LexisNexis(R) Headnotes

*Civil Procedure > Pleading & Practice > Defenses, Demurrers, & Objections > Failures to State Claims
Civil Rights Law > Prisoner Rights > Prison Litigation Reform Act > Claim Dismissals
Civil Rights Law > Prisoner Rights > Prison Litigation Reform Act > Judicial Screening*

[HN1] Both 28 U.S.C.S. §§ 1915A, 1915(e), require district courts to screen cases at the moment of filing and to sua sponte dismiss those that are frivolous or fail to state a claim for relief. The court must construe the complaint in a light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief.

*Governments > Local Governments > Claims By & Against
Governments > Local Governments > Employees & Officials*

[HN2] To sustain a civil rights suit against a county sheriff acting in his official capacity, a plaintiff would have to show that his injuries were caused by an unconstitutional policy or custom of the county.

Civil Rights Law > Section 1983 Actions > Scope Governments > Local Governments > Claims By & Against

[HN3] Counties are persons exposed to litigation under 42 U.S.C.S. § 1983 if the legal requisites are pleaded and proved.

Civil Rights Law > Section 1983 Actions > Government Actions

Criminal Law & Procedure > Criminal Offenses > Miscellaneous Offenses > Abuse of Public Office > Illegal Gratuities > Elements Criminal Law & Procedure > Postconviction Proceedings > Imprisonment

[HN4] 42 U.S.C.S. § 1983 actions against municipalities (or counties) carry certain special elements, including proof (1) that the city (or county) pursued an official custom or policy of failing to adequately train, supervise, or discipline its officers in a particular matter, and (2) that such official policy or custom was adopted by the official makers of policy with "deliberate indifference" towards the constitutional rights of persons affected by the policy or custom.

COUNSEL: MICHAEL S. POLLICE, Plaintiff - Appellant, Pro se, Comstock Park, MI.

For JAMES DOUGAN, Defendant - Appellee: Ronald W. Chapman, Chapman & Associates, Bloomfield Hills, MI.

JUDGES: Before: GUY and MOORE, Circuit Judges; DOWD, District Judge. *

* The Honorable David D. Dowd, Jr., United States District Judge for the Northern District of Ohio, sitting by designation.

OPINION:

ORDER

This is an appeal from a district court judgment dismissing a prisoner civil rights complaint. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. *Fed. R. App. P. 34(a)*.

In 1998, Michael Pollice filed a civil rights complaint against the Kent County [Michigan] [*2] Sheriff James Dougan in connection with injuries Pollice allegedly suffered while he was incarcerated at the Kent County facility. The defendant responded and the district court eventually dismissed the complaint as frivolous.

The district court ordered this pro se prisoner in forma pauperis complaint dismissed as frivolous and for

failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b). *See McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997). [HN1] Both sections 1915A and 1915(e) require district courts to screen cases at the moment of filing and to sua sponte dismiss those that are frivolous or fail to state a claim for relief. *See id. at 612; accord 28 U.S.C. §§ 1915A(a) and (b), 1915(e)(2)*. The court must construe the complaint in a light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether Pollice undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. *See Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 561 (6th Cir. 1998).

The substance [*3] of the complaint is as follows: On November 24, 1998, Pollice filed a civil rights complaint for monetary damages and injunctive relief against Kent County [Michigan] Sheriff James Dougan in his official capacity only. Pollice claimed that he cracked two of his teeth during a meal he ate during his incarceration at the Kent County Jail on September 18, 1998. Pollice alleged that he complained of his injury to the entire medical and correctional staff at the Jail for two months but he never received any treatment for his teeth. Pollice noted that the lack of treatment was not in line with the Kent County Jail handbook. Pollice asked for \$ 175,000 and an order directing the defendant to supply Pollice with proper dental care for his remaining teeth. The district court docket sheet reflects that on June 15, 1999, Pollice notified the district court that his place of confinement had been changed from the Kent County Jail to a Michigan state facility.

On August 31, 1999, the district court ordered that the complaint should be dismissed pursuant to the review mandated by 28 U.S.C. § 1915(e)(2) for failing to state a claim. The court noted that any claim for injunctive [*4] relief stated by Pollice had been mooted out by his subsequent transfer to another place of confinement. The court also held that any claim for monetary damages against the Sheriff in his official capacity must be dismissed as Pollice did not allege that the Eighth Amendment violation took place as a direct result of a county policy or custom. On appeal, Pollice essentially reasserts the allegations of this complaint.

The district court's judgment should be affirmed. The district court properly held that Pollice's claims for injunctive relief did not survive his relocation to another prison. *See Kensu v. Haigh*, 87 F.3d 172, 175 (6th Cir. 1996). In addition, [HN2] to sustain a suit against Dougan acting in his official capacity, Pollice would have to show that his injuries were caused by "an unconstitutional policy or custom of [Kent County]." *Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994). [HN3] Counties are "persons" exposed to litigation under 42 U.S.C. § 1983 if the legal requisites are pleaded and

proved. *See, e.g., Haverstick Enters. v. Financial Federal Credit*, 32 F.3d 989, 996 n. 8 (6th Cir. 1994) ("[HN4] section [*5] 1983 actions against municipalities [or counties] carry certain special elements, including proof (1) that the City [or county] pursued an official custom or policy of failing to adequately train, supervise, or discipline its officers in a particular matter, and (2) that such official policy or custom was adopted by the official makers of policy with 'deliberate indifference' towards the constitutional rights of persons affected by the policy or custom.") (brackets added) (citing *City of Canton v.*

Harris, 489 U.S. 378, 387-88, 103 L. Ed. 2d 412, 109 S. Ct. 1197 (1989)). Pollice's complaint, in contrast, makes no such allegation and, to the contrary, states that his substandard treatment was contrary to the official Kent County Jail handbook. This complaint is facially deficient and the appeal lacks merit.

Accordingly, the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.