

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 04-4653

PASCAL J. DUBOIS,
Appellant

v.

WARDEN MICHAEL T. ABODE; JOYCE PERRE, Social Worker;
JOHN AND JANE DOE; MIDDLESEX COUNTY ADULT CORRECTION CENTER;
UNITED STATES POSTAL SERVICE

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 02-cv-04215)
District Judge: Honorable Dickinson R. Debevoise

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B)
MAY 5, 2005

Before: ALITO, MCKEE AND AMBRO, Circuit Judges.

(Filed: July 27, 2005)

OPINION

PER CURIAM.

Pascal Dubois, an inmate in New Jersey, filed this action pursuant to 42 U.S.C. § 1983 based upon events that occurred while he was a pre-trial detainee. Dubois alleged

that the defendants denied him access to the courts by, inter alia, censoring, interfering with, and improperly inspecting his outgoing legal mail.¹

The District Court sua sponte dismissed the claims against the United States Postal Service (“USPS”), finding that the USPS is not subject to suit for a violation of Dubois’ constitutional rights. Defendants Middlesex County Adult Correction Center (“MCACC”), Warden Abode, and Perre all filed motions for summary judgment. The District Court found that Dubois’ claim against MCACC seeks to hold MCACC liable solely based upon the actions of its employees, but liability under 42 U.S.C. § 1983 cannot be based upon the doctrine of respondeat superior. The District Court next found that Dubois’ claim concerning his incoming mail, raised for the first time at the summary judgment stage, is waived because Dubois did not raise it in his complaint. With regard to Dubois’ claim against Abode relating to his outgoing mail, the District Court found that the claim is barred by res judicata as the same issue was previously litigated (and found meritless) in another of Dubois’ lawsuits. See Dubois v. Abode, et al., D.C. Civ. No. 02-cv-03397 (D.N.J.). Finally, the District Court found that Dubois failed to establish that defendant Perre’s actions amounted to a constitutional violation. Therefore, District Court entered summary judgment for the remaining defendants.

Dubois timely filed this appeal. We have appellate jurisdiction pursuant to 28

¹ Because the background and specific allegations in Dubois’ complaint are fully and accurately set forth by the District Court, we do not repeat that information here. See November 30, 2004 D. Ct. Op. at 2-4.

U.S.C. § 1291. Dubois has been granted leave to proceed in forma pauperis on appeal. When an appellant proceeds in forma pauperis, this Court must dismiss the appeal if it is “frivolous.” 28 U.S.C. § 1915(e)(2)(B)(i). A frivolous appeal has no arguable basis in law or fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). After a careful review of the record, we will dismiss this appeal as frivolous.

Because the USPS is a federal agency, Dubois cannot maintain an action against it for an alleged violation of his constitutional rights. See Fed. Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 484-86 (1994). As the District Court explained, Dubois’ claim against MCACC lacks merit because liability under 42 U.S.C. § 1983 cannot be based solely upon the doctrine of respondeat superior. See Rouse v. Plantier, 182 F.3d 192, 200 (3d Cir. 1999). In addition, the District Court properly determined that Dubois waived his claim relating to incoming mail by not raising it in his complaint. To the extent Dubois seeks to re-litigate the claim relating to his outgoing mail from his previous § 1983 action against Abode, he is clearly barred under the doctrine of issue preclusion. See Burlington N. R.R. Co. v. Hyundai Merch. Marine Co., 63 F.3d 1227, 1231-32 (3d Cir. 1995). To the extent Dubois seeks to raise additional mail-related claims against Abode that could have been raised in his previous § 1983 action, those claims are also barred. See CoreStates Bank, N.A. v. Huls America, Inc., 176 F.3d 187, 194 (3d Cir. 1999). Finally, Dubois’ claim against Perre lacks merit as Dubois cannot establish that he was actually injured from the alleged interference with his legal mail. See Oliver v. Fauver, 118 F.3d

175, 177-78 (3d Cir. 1997).

In conclusion, because Dubois' appeal of the dismissal of his claims lacks arguable merit in fact or law, we will dismiss the appeal pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).