

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-3327

KELLEY TROY COOLEY,
Appellant

v.

DETECTIVE SGT. JOHN BARBER, ACTING IN HIS OFFICIAL CAPACITY; WJET-TV; EDWARD M. MEAD SR., CHAIRMAN OF THE BOARD; TIM LAFFERTY; KARLLA MULLENEX; PAT HOWARD; LISA THOMPSON

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civ. No. 06-cv-00160E)
District Judge: Honorable Sean J. McLaughlin

Submitted for Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B) or Summary Action
Under Third Circuit L.A.R. 27.4 and I.O.P. 10.6
September 27, 2007

BEFORE: SLOVITER, CHAGARES and COWEN, CIRCUIT JUDGES

(Filed: October 4, 2007)

OPINION

PER CURIAM

This is an appeal from the District Court's dismissal of Kelley Cooley's complaint.

For the following reasons, we will summarily affirm the District Court's order. See Third Circuit L.A.R. 27.4 and I.O.P. 10.6.

On July 18, 2006, Appellant Kelley Troy Cooley, an inmate incarcerated at the State Correctional Institution at Camp Hill, Pennsylvania, filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Appellant alleges that his constitutional rights were violated as a result of alleged defamatory statements made by a police officer which were repeated in newspaper articles and television broadcasts. Specifically, Appellant claims that the alleged defamatory statements, publications and/or broadcasts caused him to suffer embarrassment and damage to his reputation in the community. The statements concerned crimes for which Appellant was charged, tried and acquitted. On July 5, 2007, the District Court, adopting the report and recommendation of the Magistrate Judge, entered an order dismissing Appellant's claim for failure to state a claim. See Fed. R. Civ. P. 12(b)(6). Appellant filed a timely notice of appeal from that order, and he also filed a motion requesting appointment of counsel pursuant to 28 U.S.C. § 1915(e)(1).

Our standard of review of the District Court's dismissal under Rule 12(b)(6) is plenary. Atkinson v. LaFayette College, 460 F.3d 447, 451 (3d Cir. 2006). Plenary review requires us to accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff. See Evancho v. Fisher, 423 F.3d 347, 350 (3d Cir. 2005).

Assuming the truth of Appellant's allegations and viewing them in the most favorable light, we must agree with the District Court that Appellant has failed to state a

claim upon which relief may be granted. “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” Harvey v. Plains Twp. Police Dep’t, 421 F.3d 185, 189 (3d Cir. 2005) (quoting West v. Atkins, 487 U.S. 42, 48 (1988)). The District Court correctly determined that Appellant fails to allege a violation of a constitutionally protected right because reputational harm alone is not a right protected by the Constitution. See Paul v. Davis, 424 U.S. 693, 712 (1976) (holding that “[t]he interest in reputation . . . is neither ‘liberty nor ‘property’ guaranteed against state deprivation without due process of law”). Appellant must also allege an alteration or extinguishment of an interest protected by the Constitution or state law. Id. at 708-09; Clark v. Twp. of Falls, 890 F.2d 611, 619 (3d Cir. 1989). This has become known as the “stigma plus” requirement. Hill v. Borough of Kutztown, 455 F.3d 225, 236 (3d Cir. 2006).

Appellant alleges that he suffered “loss of employment” because he was no longer able to perform maintenance at his family’s hair salon as a result of the alleged defamation by defendants. While the Supreme Court has recognized the severity of depriving a person of the means of livelihood in the public employment context, neither the Supreme Court nor any other Court of Appeals has recognized a protected interest in private employment. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 543 (1985) (“[T]he significance of the private interest in retaining employment cannot be gainsaid. We have frequently recognized the severity of depriving a person of the means of

livelihood.”); see Pendleton v. City of Haverhill, 156 F.3d 57, 63 (1st Cir. 1998)(“violation of constitutional proportions under a ‘stigma plus’ theory exists only if, and to the extent that, the opportunities lost are government benefices denied as a result of governmental action”); Drake v. Lab. Corp. of Am. Holdings, 290 F. Supp. 2d 352, 361 (E.D.N.Y. 2003)(loss of private at-will employment is insufficient to establish the deprivation of a constitutionally-protected interest). Therefore, even if we accept Appellant’s defamation claims as true, he cannot succeed because he has failed to allege deprivation of an interest protected by the Constitution or state law.¹

Accordingly, because this appeal presents us with no substantial question, we will summarily affirm the decision of the District Court. See Third Circuit L.A.R. 27.4 and I.O.P. 10.6. In light of our disposition, Appellant’s motion for appointment of counsel is denied. See Tabron v. Grace, 6 F.3d 147, 155-56 (3d Cir. 1993).

¹Under Fed. R. Civ. P. 12(b)(6) a plaintiff with an arguable claim is ordinarily accorded notice of a pending motion to dismiss for failure to state a claim and an opportunity to amend his complaint before his motion is ruled upon. Grayson v. Mayview State Hosp., 293 F.3d 103, 112 (3d Cir. 2002). In the present case Appellant was given notice and an opportunity to amend his complaint. See Order, December 8, 2006. Appellant’s amended complaint, however, fails to allege additional facts which would cure the defects in his original complaint. See “Request Amendment of Complaint to Cure Procedural Defects Pursuant to Fed. R. Civ. Proc. 15,” December 18, 2006.