Wilson v. Houston Community College System et al

2019 | Cited 0 times | S.D. Texas | March 22, 2019

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION DAVID BUREN WILSON, §

§ § § § § § § § Plaintiff, VS. CIVIL ACTION NO. 4:18-CV-00744 HOUSTON COMMUNITY COLLEGE SYSTEM, et al, Defendants.

MEMORANDUM OPINION AND ORDER I. INTRODUCTION

Pending before the Court is the defendant s, Houston Community College System , pursuant to 12(b)(1) and 12(b)(6) (Dkt. No. 17), , response to the motion (Dkt. No. 21), and the defendant s 1

motion to dismiss reply. (Dkt. No. 24). After having carefully considered the motion, response, reply and the applicable law, the Court determines that the defendants motion to dismiss should be GRANTED.

II. FACTUAL BACKGROUND

In November 2013, the plaintiff was elected to the Houston Community College nine-member board of trustees (t to serve on the board for six-year terms. On January 18, 2018, a majority of the board

voted to publicly censure the plaintiff for conduct that was in the judgment of his fellow board members detrimental to Houston Community College Systems 1 efendant also refers to the members of the board of trustees named in the suit. While not listed, they serve as part of the Houston Community College System entity for purposes of this Memorandum Opinion and Order.

United States District Court Southern District of Texas

ENTERED March 22, 2019 David J. Bradley, Clerk Alleging violations of its bylaws, the board determined that the plaintiff failed to (1) -making process; (2) engage in open and honest discussions in making board decisions interact with trustees in a mutually respectful manner; and (5) act in Houston Community

best interest. The board also resolved that the plaintiff would be: (1) ineligible for election to a board officer position for the 2018 calendar year; (2) ineligible for travel-related expense reimbursements

for college year 2017-2018; and (3) required to maintain board approval when requesting access to funding for community affairs programs for college year 2017-2018.

On February 7, 2018, the plaintiff amended his state court complaint suing the defendant under 42 U.S.C. § 1983, seeking money damages for alleged violations of his rights secured by the First and Fourteenth Amendments. Subsequently, the defendant removed the case to this Court. On Jun 14, 2018, the plaintiff filed his second amended complaint with the Court. On July 24, 2018, the defendant filed motion to dismiss. III. STANDARD OF REVIEW

A. Standard Under Fed. R. Civ. P. 12(b)(1) Rule 12(b)(1) permits the dismissal of an action for the lack of subject matter

lacks subject- see also Berkshire Fashions, Inc. v. M.V. Hakusan II, 954 F.2d 874, 880 (3d. Cir. 1992)

(citing Rubin v. Buckman, 727 F.2d 71, 72 (3d Cir. 1984)) distinction between a Rule 12(h)(3) motion and a Rule 12(b)(1) motion is simply that the

former may be asserted at any time and need not be responsive to any pleading of the of limited jurisdiction, absent jurisdiction conferred by statute, they lack the power to adjudicate claims. See, e.g., , 138 F. 3d 144, 151 (5th Cir. 1998) (citing Veldhoen v. United States Coast Guard, 35 F. 3d 222, 225 (5 th

Cir. 1994)). Therefore, the party

Vantage Trailers, Inc. v. Beall Corp., 567 F.3d 745, 748 (5th Cir. 2009) (citing New Orleans & Gulf Coast Ry. Co. v. Barrois, 533 F.3d 321, 327 (5th Cir. 2008)); see also Stockman, 138 F.3d at 151.

satisfy itself as to the existence of its poMD Physicians& Assoc., Inc. v. State Bd. Of Ins., 957 F.2d 178, 181 (5th Cir. 1992) (citing Williamson v. Tucker, 654 F.2d 404, 413 (5th Cir. 1981)); see also Vantage Trailers, 567 F.3d at 748 (reasoning ction, the district court must resolve disputed facts without . In making its ruling, a court may rely on any of the following: (1) the complaint alone, (2) the complaint supplemented by undisputed facts evidenced in the record, or (3) the complaint MD Physicians, 957 F.2d at 181 n.2 (citing Williamson, 645 F.2d at 413).

B. Standard Under Fed. R. Civ. P.12(b)(6) Federal Rule of Civil Procedure 12(b)(6) authorizes a defendant to move to dismiss for failure to state a claim upon which relief may be granted. Fed. R. Civ.

complaint is to be construed in a light most favorable to the plaintiff, and the allegations

Oppenheimer v. Prudential Sec., Inc., 94 F.3d. 189, 194 (5th Cir. 1996) (citing Mitchell v. McBryde, 944

F.2d 229, 230 (5th Cir. 1991)). to relief above the speculative level, on the assumption that all the allegation in the

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965, 167 L.Ed.2d 929 (2007). Moreover, in light of the Federal Rule of Civil Procedure 8(a)(2),

Erickson v. Pardus, 551 U.S. 89,93,127 S.Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007) (per curiam) (quoting Twombly, 550 U.S. at 555, 127 S. Ct. at

elements of a cause of act Twombly, 550 U.S. at 555, 127 S.Ct. at 1964 65 (citing Papason v. Allain, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed.2d 209 (1986)).

In Ashcroft v. Iqbal, the Supreme Court expounded upon the Twombly standard, vive a motion to dismiss, a complaint must contain sufficient

Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Court 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting Twombly, Case 4:18-cv-00744 Document 55 Filed on 03/22/19 in TXSD Page 4 of 8 when the plaintiff pleads factual content that allows the court to draw the reasonable 129 S. Ct. at 1949 (citing Twombly well-leaded facts do not permit the court to infer more than the mere possibility of

misconduct, the complaint has alleged- - enti Iqbal, 556 U.S. at 679, 129 S. Ct. at1950 (quoting Fed. R.

Civ.P.8(a)(2)).

limited to deciding whether the plaintiff is entitled to offer evidence is support of his or her claims, not whether the plaintiff will eventually prevail. Twombly, 550 U.S. at 563, 127 D. Ct. at 1969 n.8 (citing Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 40 L.Ed.2D 90 (1974)); see also Jones v. Greninger, 188 F.3d 322, 324 (5th Cir. 1999). In this regard, its review is limited to the allegations in the complaint and to those

are referred to in the complaint and are central to the claims. Causey v. Sewell Cadillac- Chevrolet, Inc. judicial notice of documents in the public record ..., and may consider such documents in LDC v. Phillips, 401 F.3d 638, 640 n. 2 (5th Cir. 2005) (citing Lovelace v. Software Spectrum Inc., 78 F.3d 1015, 1017 18 (5th Cir. statements [they] contain, not to prove the trut Lovelace, 78 F.3d at

Hall v. Hodgkins, No. 08-40516, 2008 WL 5352000, (5th Cir. Dec. 23, 2008) (citing Kansa Reinsurance Co., Ltd v. Cong. Mortg. Corp. of Tex., 20 F.3d 1362, 1366 (5th Cir. 1994)). IV. ANALYSIS AND DISCUSSION

defendant violated his First Amendment right of speech. The defendant contends that the

plaintiff lacks standing to assert his claim. Standing is a threshold question in every federal court case. It is well-settled that, imum of standing Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). These elements are: (1) an injury-in-fact that is concrete and actual or imminent, not hypothetical; (2) a fairly traceable causal link between the injury and the defendant's actions; and (3) that the injury will likely be redressed by a favorable decision. See, e.g., Bennett v. Spear, 520 U.S. 154, 167, 117 S. Ct. 1154, 137 L.Ed.2d 281 (1997); Little v. KPMG LLP, 575 F.3d 533, 540 (5th Cir. 2009).

The plaintiff alleges that the board injured his right to free speech by censuring him for actions they disagreed with. Another circuit has established decision to censure a member of a political body does not give rise to a First Amendment

violation claim. Phelan v. Laramie Cnty. Cmty. Coll., Bd. Of Trustees, 235 F. 3d 1243 (10th Cir. 2000). While not binding, Phelan, is instructive here. In Phalen, a community college board of trustees passed a resolution censuring one of The censure allowed the board to

voice opinion that the member had violated the policy and to ask that she not engage in similar conduct in the future. The board member claimed that she was injured by the censure because it tarnished her reputation. since it did not prevent her from performing

her official duties or restrict her opportunity to speak or her right to vote as a board member. Id. at 1248. Ultimately, the censured member remained free to express her Id.

The facts in Phelan are analogous to the facts before the Court. Here, the defendant, a community college and board of trustees, passed a similar resolution The censure described and reprehensible. The plaintiff maintains that the censure injured his free speech rights by enjoining him from holding an office position on the board, from accessing funds in his board account for community affairs without board approval and from reimbursement of travel related expenses. Like in Phelan, however, the censure does not cause an actual injury to his right to free speech. The plaintiff is not prevented from performing his official duties. In spite of the censure, the plaintiff is free to continue attending board meetings and expressing his concerns regarding decisions made by the board. Further, the censure does not prohibit him from speaking publicly.

The plaintiff has failed to demonstrate any injury-in-fact as required to establish standing under 12(b)(1). In order to prevail t

Spokeo, Inc. v. Robins, 136 S. Ct. 1540

(2016). The plaintiff argues that he suffered harm by not being reimbursed for travel expenses. The defendant maintains, however, that the plaintiff has not made a claim for reimbursement. Additionally, at this time, the plaintiff has access to the board account for community affairs and may run for a board officer position. The actions complained of by the plaintiff are not actual in that

he may still exercise his right to free speech. Since there is no injury-in-fact, and injury is necessary for analysis of the second and third elements of standing, they are not addressed.

due process claim rests on a theory that the plaintiff suffered harm coupled with the denial of his constitutional right to speak without retaliation. See Paul v. Davis, 424 U.S. 693, 711, 96 S. Ct. 1155, 47 L.Ed.2d 405 efendant did not infringe the leads the Court to conclude that the board did not injure his Fourteenth Amendment rights. V. CONCLUSION Based on the foregoing analysis and discussion, the defendant s motion to dismiss is GRANTED. It is so ORDERED. SIGNED on this 22 nd

day of March, 2019.

_____ Kenneth M. Hoyt United States District Judge