

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3224

COREY BRACEY,
Appellant

v.

HUNTINGDON COUNTY; JUDGE STEWART L. KURTZ; ADAM PARK; TRAVIS
S. ANDERSON; DEPARTMENT OF CORRECTIONS

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 1-14-cv-02271)
District Judge: Honorable Malachy E. Mannion

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
April 25, 2019

Before: JORDAN, GREENAWAY, JR., and NYGAARD, Circuit Judges

(Opinion filed: August 20, 2019)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Pro se appellant Corey Bracey appeals from the District Court's order granting summary judgment in favor of several defendants in an action that Bracey brought pursuant to 42 U.S.C. § 1983 and Pennsylvania state law. For the reasons discussed below, we will summarily affirm.

I.

Because we write primarily for the parties, we will recite only the facts necessary for our discussion. Bracey, a Pennsylvania state prisoner, was formerly incarcerated at SCI Huntingdon. On November 17, 2012, Corrections Officer Adam Park suffered a wound during an altercation between Bracey and SCI Huntingdon prison staff, and feared that he had been exposed to Bracey's blood. That same day, a physician examined Park and determined that a significant exposure had occurred. Two days later, SCI Huntingdon staff requested Bracey's consent to undergo HIV and hepatitis testing. He refused, and again refused the next day.

Lacking Bracey's consent, the Department of Corrections (DOC)—represented by Assistant Counsel Travis S. Anderson—filed a lawsuit in the Huntingdon County Court of Common Pleas on November 20, 2012. The lawsuit sought to compel Bracey to give blood for purposes of HIV and hepatitis testing pursuant to Pennsylvania's Confidentiality of HIV-Related Information Act ("HIV Act"), 35 Pa. Stat. §§ 7601-12. Judge Stewart L. Kurtz presided over the case and held a hearing on November 26, 2012, at which Park, a doctor, and a nurse testified on behalf of the DOC. Bracey represented himself and cross-examined those witnesses. Bracey decided not to testify after he was

informed that his testimony could be used against him in any criminal proceedings stemming from the altercation with Park. At the conclusion of the hearing, Judge Kurtz ruled in the DOC's favor and ordered Bracey to submit to a blood draw for HIV and hepatitis testing. Judge Kurtz denied Bracey's request for a stay pending appeal. Bracey was then transported back to SCI Huntingdon, where he was restrained and a blood sample was taken. The test results came back negative for HIV and hepatitis.

In his amended complaint, Bracey alleged that the defendants violated his constitutional rights and state law when they sought, authorized, or condoned the involuntary extraction of his blood for HIV and hepatitis testing. Bracey named as defendants the DOC, Park, Anderson, Judge Kurtz, and Huntingdon County. The District Court granted the defendants' motions to dismiss. On appeal, we vacated the District Court's order as to defendants Park, Anderson, and the DOC, and we remanded for further proceedings. See Bracey v. Huntingdon County, 699 F. App'x 114, 117 (3d Cir. 2017) (per curiam) (non-precedential). The District Court then dismissed the claims against the DOC on alternative grounds,¹ but permitted the claims against Park and Anderson to proceed.

After discovery, the District Court entered summary judgment in favor of the remaining defendants on Bracey's federal claims. The District Court dismissed the remaining state law claims without prejudice. This appeal ensued.

¹ As the District Court properly determined that the DOC was immune from suit under the Eleventh Amendment, see Lavia v. Pa. Dep't of Corr., 224 F.3d 190, 195 (3d Cir.

II.

We have jurisdiction under 28 U.S.C. § 1291. We exercise plenary review over the District Court's order granting summary judgment. See Blunt v. Lower Merion Sch. Dist., 767 F.3d 247, 265 (3d Cir. 2014). Summary judgment is proper when, viewing the evidence in the light most favorable to the nonmoving party and drawing all inferences in favor of that party, there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Kaucher v. County of Bucks, 455 F.3d 418, 422-23 (3d Cir. 2006). We may summarily affirm “on any basis supported by the record” if the appeal fails to present a substantial question. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam); Third Circuit LAR 27.4 and I.O.P. 10.6.

III.

The District Court properly determined that the remaining defendants were entitled to summary judgment on Bracey's federal abuse-of-process claim.² To the extent that such a claim remains viable, see Halsey v. Pfeiffer, 750 F.3d 273, 290 n.14 (3d Cir. 2014), “a plaintiff must show that the defendant used legal process against the plaintiff in a way that constituted a perversion of that process,” meaning it was used “primarily to

2000), we do not discuss this issue further.

² Bracey also raised this as a state law claim, and he raised other state law claims as well. Because the District Court properly disposed of all the federal claims in this case, the District Court was well within its discretion to dismiss without prejudice the remaining state law claims. See 28 U.S.C. § 1367(c)(3); Hedges v. Musco, 204 F.3d 109, 123 (3d Cir. 2000).

accomplish a purpose for which the process was not designed,” Gen. Refractories Co. v. Fireman’s Fund Ins. Co., 337 F.3d 297, 304 (3d Cir. 2003) (quotation marks and citations omitted); see also McArdle v. Tronetti, 961 F.2d 1083, 1088 (3d Cir. 1992) (holding that “a claim of malicious use of process may state a Section 1983 claim if it includes the elements of that common law tort as it has developed”).

Here, Bracey did not dispute that the HIV Act expressly permitted the defendants to obtain a court order requiring him to submit to an involuntary blood draw for HIV testing, and requiring the disclosure of the results to the defendants. See 35 Pa. Stat. § 7608(b); see also In re Milton S. Hershey Med. Ctr. of Pa. State Univ., 634 A.2d 159, 161-62 (Pa. 1993). Bracey also conceded that the DOC routinely relies on other legal authority to involuntarily treat and test inmates, and that the defendants could have relied on that authority to require the testing of Bracey’s blood for hepatitis. See, e.g., Hill v. Dep’t of Corr., 992 A.2d 933, 938 (Pa. Commw. Ct. 2012) (affirming an injunction “authoriz[ing] DOC to involuntarily examine and perform invasive diagnostic tests on [inmate] including blood and urine tests”). Nonetheless, Bracey raised an abuse-of-process claim based on the fact that the defendants proceeded under the HIV Act and failed to cite the legal authorities that would have supported their right to test Bracey’s blood for hepatitis. But even assuming that the defendants made a legal error in their pleading or citations, no evidence in the record suggests that their lawsuit was used “primarily to accomplish a purpose for which the process was not designed.” Gen. Refractories Co., 337 F.3d at 304. The record shows that the defendants transparently

sought an order to test Bracey's blood for hepatitis as well as for HIV, and, again, Bracey concedes that there was a valid legal basis for the state court to enter such an order. Under these circumstances, the remaining defendants were entitled to summary judgment on the federal abuse-of-process claim.

The remaining defendants were also entitled to summary judgment on the remaining federal claims. Bracey was afforded notice and a pre-deprivation hearing where he had the opportunity to testify and to cross-examine witnesses, and he conceded that state law entitled the defendants to test his blood for hepatitis. See Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”) (quotation marks and citations omitted). Furthermore, he has provided no evidence that the state court proceeding under the HIV Act was inadequate to protect any procedural due process right. See Revell v. Port Auth. of N.Y. & N.J., 598 F.3d 128, 139 (3d Cir. 2010) (granting summary judgment on procedural due process claim where plaintiff “failed to explain” why state’s procedures were inadequate).

Similarly, the remaining defendants were entitled to summary judgment on Bracey’s substantive due process claims because he presented no evidence that the defendants’ proceeding under the HIV Act deprived him of any constitutionally protected interest in a manner that “shocks the conscience.” See Chainey v. Street, 523 F.3d 200, 219 (3d Cir. 2008); cf. Hedges, 204 F.3d at 120 (noting that the “Supreme Court has upheld the use of blood[] tests in a multitude of cases”). To the extent that Bracey’s

substantive due process claim relies on Doe v. Delie, 257 F.3d 309 (3d Cir. 2001), where we held that under the Fourteenth Amendment a “constitutional right to privacy in one’s medical information exists in prison,” Doe also held that the right “may be curtailed by a policy or regulation that is shown to be ‘reasonably related to legitimate penological interests.’” Id. at 317 (quoting Turner v. Safley, 482 U.S. 78, 89 (1987)). Because Bracey conceded that the defendants had a legal right to disclose the medical information at issue here, and because Bracey presented no evidence that the defendants’ limited disclosure—pursuant to state law and a court order—was in any way unrelated to legitimate state interests, the remaining defendants were entitled to summary judgment on this claim.³

For the foregoing reasons, we will summarily affirm the District Court’s judgment. See 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

³ Even assuming that Bracey did not abandon his Fourth Amendment claim, the evidence is insufficient to support a finding that he was subjected to an unreasonable search or seizure, as he was afforded procedural protections under state law and the HIV Act. See United States v. Ward, 131 F.3d 335, 341 (3d Cir. 1997) (“In light of the extensive protections afforded by the [Violence Against Women] Act, there can be no doubt that a blood test under its authority for the limited purpose of ascertaining the presence of HIV complies with the Fourth Amendment.”); see also Hamilton v. Brown, 630 F.3d 889, 894 (9th Cir. 2011) (collecting cases). Thus, the remaining defendants were also entitled to summary judgment on this claim.