NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 24, 2023*
Decided October 25, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-1453

CHARLES W. FLORANCE,
Plaintiff-Appellant,

v.

CAROL C. BARNETT, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division.

No. 3:22-CV-399 JD

Jon E. DeGuilio,
Judge.

O R D E R

Charles Florance appeals the dismissal of his lawsuit about his attempts—ultimately successful—to have his federal student loan canceled because he is disabled. He sued under 42 U.S.C. §§ 1983 and 1985, alleging that his medical school's administrators violated, and conspired with outside attorneys to violate, his rights to

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

due process and equal protection. The district court granted the defendants' motions to dismiss, concluding that Florance was not deprived of any property and that disability-based discrimination is not actionable under § 1985. We affirm.

Florance attended Indiana University School of Medicine in the fall of 2016, financing his education with a Primary Care Loan under a program administered by the United States Department of Health and Human Services (HHS). Florance withdrew from school the following spring. In 2019, the University initiated collections proceedings against Florance in state court, asserting that his student loan was delinquent. Lawyers from a private firm represented the University. While the state case was pending, Florance informed the University that the Department of Veterans Affairs (VA) had recently rated him as having a permanent and total disability. He asserted that this excused him from paying back his loan and asked the University to recommend to HHS that his loan be canceled. The University took no action.

About seven months later, after some prodding by Florance, HHS requested a recommendation from the University. The relevant administrators, concluding that Florance did not meet the statutory requirements for cancelation because he appeared to be gainfully employed, recommended that HHS deny the request. The administrators did not mention Florance's VA disability rating. When HHS denied the cancelation request, Florance quickly disputed the decision. Within two months, the agency changed its determination and canceled Florance's loan. The University dismissed the collection case shortly thereafter.

Florance brought this suit under 42 U.S.C. §§ 1983 and 1985 against several University administrators and the attorneys who brought the University's collection case. Florance asserted that the defendants deprived him of property without due process by failing to recommend his loan for cancelation and that they conspired to violate his rights out of hostility toward persons with disabilities.

The University defendants and the attorney defendants separately moved to dismiss the complaint. They supported their motions with seven documents from the state-court record and two letters between the University and HHS about Florance's loan. The district court agreed with the defendants that it could take judicial notice of the state-court documents and that it could consider the letters because they were mentioned in, and central to, Florance's complaint. The district court ultimately granted the motions to dismiss and concluded that amending the complaint would be futile. The court dismissed the complaint with prejudice and entered judgment.

On appeal, Florance first contests the district court's reliance on extrinsic documents in ruling on the motions to dismiss, but the court did not abuse its discretion when it considered the defendants' exhibits without treating the defendants' motions as motions for summary judgment. *See Ronald D. Fosnight & Paraklese Techs., LLC v. Jones*, 41 F.4th 916, 922 (7th Cir. 2022). The state court documents—which included the docket sheet, court orders, and a stipulated partial dismissal—were matters of public record and not subject to reasonable dispute, so the court could properly take notice of them. *See* FED. R. EVID. 201(b); *Olson v. Bemis Co.*, 800 F.3d 296, 305 (7th Cir. 2015). As for the letters, Florance discussed them in his complaint, and they were central to his primary grievance: One was the University's recommendation to HHS, and the other was HHS's denial of cancelation. Therefore, the court properly considered them. *See Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012).

As to the dismissal for failure to state a claim, we review the decision de novo, accepting Florance's factual allegations as true and drawing reasonable inferences in his favor. *Dix v. Edelman Fin. Servs., LLC*, 978 F.3d 507, 512 (7th Cir. 2020).

Florance first contends that his complaint states a procedural due process claim, but his allegations do not plausibly suggest that he had any protected interest, which is a threshold question. *See Booker-El v. Superintendent, Ind. State Prison*, 668 F.3d 896, 900 (7th Cir. 2012). A "unilateral expectation" does not rise to the level of a property interest. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). Rather, an interest arises from an independent source of substantive rights, such as a statute or public contract, *see id.*, and it triggers procedural protections only when the state's discretion is so constrained that it cannot deny a person the interest except under specific conditions. *Booker-El*, 668 F.3d at 900; *see Manley v. Law*, 889 F.3d 885, 890 (7th Cir. 2018) (substantive interest can be found in "federal positive law" and "must be a freestanding entitlement").

Florance lacks any such substantive interest. He asserts that, because the VA found him permanently and totally disabled, he had a property interest in the form of an absolute right to the cancelation of his loan. But the statute governing Florance's loan program mandates cancelation if HHS—not another agency—determines that the borrower has become "permanently, and totally disabled." 42 U.S.C. § 292(r)(d). The implementing regulations explain that a borrower who is "unable to engage in any substantial gainful activity" because of a medical impairment is permanently and totally disabled. 42 C.F.R. § 57.211(a). Neither provision demands cancelation upon a finding of permanent and total disability by the VA, which defines that term differently. *See* 38 C.F.R. § 3.340; *cf.* 20 U.S.C. § 1087(a)(2) (explaining that recipients of certain loans

administered by the Department of Education shall be considered permanently and totally disabled if the VA deems them unemployable). On the contrary, the Secretary of HHS has discretion to decide whether a request for cancelation should be granted based on statutory criteria. *See Rock River Health Care, LLC v. Eagleson*, 14 F.4th 768, 774 (7th Cir. 2021) (distinguishing "discretionary determination" from "entitlement"). Florance therefore fails to state a claim for a violation of due process.

The same conclusion must hold for the alleged conspiracy to violate Florance's right of due process. To state a claim under § 1983 through a conspiracy theory, there must be an actual deprivation of rights. *See Dix*, 978 F.3d at 518. No matter who the defendants are, Florance lacks the protected property interest needed to state a claim.

Florance's assertions of a conspiracy to violate his rights fare no better under 42 U.S.C. § 1985(2)–(3). Although Florance brings these claims against both sets of defendants, "[t]he function of § 1985(3) is to permit recovery from a private actor who has conspired with state actors," so the § 1985 claims against the state defendants, who can be sued directly under § 1983, are "superfluous." *See Fairly v. Andrews*, 578 F.3d 518, 526 (7th Cir. 2009). Regardless, Florance's allegations do not add up to a claim that anyone conspired to interfere with his civil rights. As to § 1985(2), we agree with the district court that only the second clause—which prohibits conspiracies to obstruct justice in state courts with the intent to deny someone equal protection of the law—is conceivably at issue.[1] A violation of either this clause or of § 1985(3)—which more broadly prohibits conspiring to deprive a "person or class of persons of the equal protection of the laws"—must involve animus against a suspect class. *Milchtein v. Milwaukee Cnty.*, 42 F.4th 814, 827 (7th Cir. 2022) (discussing subsection (3)); *Kowalski v. Boliker*, 893 F.3d 987, 1001 (7th Cir. 2018) (discussing the second clause of subsection (2)).

Florance is not a member of a suspect class for purposes of § 1985 and therefore cannot state a claim. His allegation that the defendants acted out of animus toward persons with disabilities does not suffice because, as he concedes, the precedent in this circuit precludes disability-based claims under § 1985. *D'Amato v. Wis. Gas Co.*, 760 F.2d 1474, 1486 (7th Cir. 1985). And although Florance also contends that *D'Amato* does not or should not apply to persons, like him, with total and complete disabilities, the line he tries to draw does not amount to a "compelling reason" for us to overturn circuit precedent. *United States v. Lara-Unzueta*, 735 F.3d 954, 961 (7th Cir. 2013). That is enough

[1] The first clause prohibits conspiracies to intimidate parties or witnesses in federal court.

of a reason to reject Florance's claim, and we need not consider whether, as the district court concluded, his allegations of animus were insufficient. To the extent he intends to seek further review, he has preserved his challenge to *D'Amato*.

Finally, we agree with the district court's decision to dismiss with prejudice and enter final judgment without affording Florance the chance to amend his pleadings because amendment would be futile. Indeed, Florance has not offered any amendment that could generate a legally viable claim. The problems we have described are matters of law and cannot be remedied with new or augmented factual allegations. *See Nowlin v. Pritzker*, 34 F.4th 629, 635 (7th Cir. 2022).

AFFIRMED