

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas

ENTERED

September 17, 2020

David J. Bradley, Clerk

Winfred Lovely,

Plaintiff,

versus

Fresenius Kidney Care, et al.,

Defendants.

§
§
§
§
§
§
§
§
§
§

Civil Action H-20-471

Opinion on Dismissal

1. *Introduction.*

Winfred Lovely sued for retaliation and refusal to be transferred to a different care facility. Fresenius Kidney Care and Davita Kidney Care move to dismiss.

2. *Background.*

In June 2018, Lovely was a patient at Davita and requested a transfer to a facility that offered intradermal lidocaine. On June 26, 2018, Davita offered two centers for transfer, and Lovely refused. Davita told Lovely to find a suitable center, and they would assist in the transfer. Davita offered their assistance again in July 2018. On August 14, 2018, Lovely spoke with a Davita administrator and his social worker regarding the transfer and then refused his dialysis treatment. He continued to refuse treatment until September 25, which ultimately led to the need for emergency treatment. From August 2018 through November 2018, Davita continued to attempt to foster a transfer, but Lovely remained uncooperative. Lovely was then placed on an inactive roster and did not return. In February 2020, Lovely sued for retaliation in giving the emergency treatment and for refusing to transfer him to a new facility.

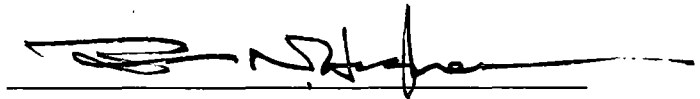
3. *Pleading*

Lovely must plead sufficient facts in the complaint to show that he is entitled to relief. However, in the complaint, Lovely pleads vague allegations of conduct by Davita relating to a refused transfer and the giving of emergency treatment. He states no basis for a legal claim or pleads actionable facts.

4. *Conclusion.*

Because Lovely has not stated a claim, this case is dismissed with prejudice.

Signed on September 17, 2020, at Houston, Texas.



Lynn N. Hughes
United States District Judge