

IN THE UTAH COURT OF APPEALS

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Earl L. Cline II,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20070462-CA
v.)	
)	F I L E D
)	(August 28, 2008)
<u>Kevin Brown</u> , et al.,)	
)	
Defendants and Appellee.)	2008 UT App 319

Fourth District, Provo Department, 050401710
The Honorable Fred D. Howard

Attorneys: Earl L. Cline II, West Jordan, Appellant Pro Se
Tim Dalton Dunn, Kevin D. Swenson, and Clifford C.
Ross, Salt Lake City, for Appellee

Before Judges Greenwood, Billings, and McHugh.

PER CURIAM:

Earl L. Cline II appeals from the district court's order granting Kevin Brown's motion to dismiss. The trial court subsequently certified the order as a final order under rule 54(b) of the Utah Rules of Civil Procedure.

"A motion to dismiss is appropriate only where it clearly appears that the plaintiffs would not be entitled to relief under the facts alleged or under any set of facts they could prove to support their claim." Baker v. Angus, 910 P.2d 427, 430 (Utah Ct. App. 1996). Further, "[b]ecause the propriety of a 12(b)(6) dismissal is a question of law, 'we give the trial court's ruling no deference and review it under a correctness standard.'" Id. (citation omitted). However, a court need not accept conclusory allegations made in the complaint as true. See Southern Disposal v. Texas Waste Mgmt., 161 F.3d 1259, 1262 (10th Cir. 1998); see also Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996) (affirming dismissal of § 1983 action and noting that "while the pleading standard is a liberal one, bald assertions and conclusions of law will not suffice").

Cline asserted several causes of action against Brown.¹ First, Cline alleged a cause of action under 42 U.S.C. § 1983. In order to assert a claim under this section, a plaintiff must "allege that some person has deprived him of a federal right . . . [and] that the person who has deprived him of that right acted under color of state or territorial law." Gomez v. Toledo, 446 U.S. 635, 640 (1980). The district court determined that Cline failed to allege facts that demonstrated that Brown was a state actor or otherwise acted under color of law. We agree. While Cline broadly asserts that Brown and his employer, Valley Mental Health, acted "under color of authority of state law," he asserts no facts that, if proven to be true, could substantiate this uncorroborated legal conclusion. Therefore, because the complaint failed to allege sufficient facts that if proven true would substantiate a claim under 42 U.S.C. § 1983, the district court properly dismissed this cause of action.

Cline also asserted claims against Brown for conspiracy to interfere with his civil rights under 42 U.S.C. § 1985(b) and for civil conspiracy. However, while Cline again broadly asserts that Brown "got involved in the conspiracy," he alleged no facts that, if proven to be true, would demonstrate that Brown was liable for conspiracy under either federal law or common law. Specifically, Cline failed to allege who Brown conspired with, what the object of the conspiracy was, if Brown had a meeting of the minds with the other alleged conspirators regarding the object or course of the conspiracy, or how that specific object of the conspiracy damaged Cline. See Israel v. Cannon, 746 P.2d 785, 790 (Utah Ct. App. 1987) (describing elements of conspiracy); see also 42 U.S.C. § 1985(b) (setting forth that two or more persons must conspire to interfere with a party or witness). Accordingly, because Cline failed to plead sufficient facts, which if proven true would constitute a prima facie case of conspiracy, the district court properly dismissed those causes of action for failure to state a claim for which relief could be granted.

¹Importantly, Cline's complaint consists of eighty-nine separately numbered paragraphs covering thirty-six pages. However, only two paragraphs, covering less than a page, are devoted to the alleged conduct of Brown.

Because Cline failed to plead sufficient facts to support his causes of action against Brown, the decision of the district court to dismiss the causes of action against Brown is affirmed.²

Pamela T. Greenwood,
Presiding Judge

Judith M. Billings, Judge

Carolyn B. McHugh, Judge

²This court previously alerted Cline to the nature of how to plead similar claims in Cline v. State, 2005 UT App 498, 142 P.3d 127. Many of the deficiencies discussed extensively by the court in the previous case reappear in Cline's allegations against Brown.