

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

MAR 08 1989

LESLIE PAUL,
Plaintiff-Appellant,
v.
RICHARD KURETICH,
Defendant-Appellee.

ROBERT L. HOECKER
Clerk

No. 88-1304
(D.C. No. 87-C-1721)
(D. Colo.)

ORDER AND JUDGMENT*

Before ANDERSON and TACHA, Circuit Judges, and ROGERS, District Judge.**

**The Honorable Richard D. Rogers, United States District Judge for the District of Kansas, sitting by designation.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

*This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

The plaintiff-appellant appeals the district court's order of February 16, 1988, dismissing his civil rights action. The plaintiff, a Pakistani inmate at the Colorado Territorial Correctional Facility (CTCF), commenced the underlying action pursuant to 42 U.S.C. § 1983 against the defendant, who was employed in the CTCF kitchen. The plaintiff alleged that beginning in January of 1985, while he was assigned to kitchen detail, the defendant began directing racial slurs towards the plaintiff in front of others, including prison officers and staff.

The plaintiff alleged that due to the defendant's verbal abuse, he suffered severe humiliation. The plaintiff asserted that he commenced a prison grievance action against the defendant, but the defendant did not desist in his verbal harassment. The plaintiff contended that the defendant's conduct violated certain prison regulations, as well as state law, constituted cruel and unusual punishment, and violated the plaintiff's right to due process and equal protection. He sought compensatory damages in the amount of \$10,000 and punitive damages in an equal amount.

The magistrate to whom the case was referred pursuant to local rule recommended that the plaintiff's action be dismissed. Upon review of the magistrate's recommendation and the plaintiff's objection thereto, the district court entered an order dismissing the action.

Although pro se complaints are to be construed liberally and held to a "less stringent standard than formal pleadings drafted by lawyers," Haines v. Kerner, 404 U.S. 519, 520 (1972), a

district court may dismiss a complaint that has been filed in forma pauperis under 28 U.S.C. § 1915(d) if it determines that "the plaintiff cannot make a rational argument on the law or the facts in support of his claim." Yellen v. Cooper, 828 F.2d 1471, 1475 (10th Cir. 1987) (quoting Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986)).

Based upon our review of the record and briefs on appeal,¹ we conclude that the district court did not err in dismissing the plaintiff's action. In order to state a claim under 42 U.S.C. § 1983, a plaintiff must establish that the defendant acted under color of state law and that his conduct "'deprived [the plaintiff] of rights, privileges or immunities secured by the Constitution or the laws of the United States.'" Shaw v. Neece, 727 F.2d 947, 949 (10th Cir.) (quoting Parratt v. Taylor, 451 U.S. 527, 535 (1981)), cert. denied, 466 U.S. 976 (1984).

The only conduct alleged on the part of the defendant was verbal abuse and harassment. While such conduct may give rise to a cause of action for slander in state court, it does not constitute a constitutional violation compensable in federal court. Allegations of verbal abuse or harassment "simply do not show an invasion of any federally protected right." Coyle v. Hughs, 436 F. Supp. 591, 592 (W.D. Okla. 1977). See also Rahman v. Stephenson, 626 F. Supp. 886, 888 (W.D. Tenn. 1986); Keyes v. City of Albany, 594 F. Supp. 1147, 1155 (N.D.N.Y. 1984); Freeman

¹ Although he was never served with a copy of the summons and complaint in the district court, the defendant-appellee filed a brief on appeal, stating that by so doing, he was not subjecting himself to the jurisdiction of the United States District Court for the District of Colorado.

v. Trudell, 497 F. Supp. 481, 482 (E.D. Mich. 1980); cf. Ellingburg v. Lucas, 518 F.2d 1196, 1197 (8th Cir. 1975)(damages for defamation are not recoverable under § 1983); Azar v. Conley, 456 F.2d 1382, 1389 (6th Cir. 1972)(slander is not actionable under the Civil Rights Act); Heller v. Roberts, 386 F.2d 832 (2d Cir. 1967)(same); Lynch v. Cannatella, 810 F.2d 1363, 1367 (5th Cir. 1987)(mere threatening language and gestures of a custodial officer do not amount to constitutional violations); Collins v. Cundy, 603 F.2d 825, 827 (10th Cir. 1979)(same); Stacey v. Ford, 554 F. Supp. 8, 9 (N.D. Ga. 1982)(same); Miller v. Hawver, 474 F. Supp. 441, 443 (D. Colo. 1979)(same). But cf. Burton v. Livingston, 791 F.2d 97, 100 (8th Cir. 1986)(allegations that guard made death threat, accompanied by racial epithets, while pointing cocked gun at plaintiff prisoner who had just given testimony against another guard in a § 1983 action stated a claim for relief).

The judgment of the United States District Court for the District of Colorado is AFFIRMED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM