

NONPRECEDENTIAL DISPOSITION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 2, 2024*

Decided October 4, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-3303

KEON LIPSCOMB,
Plaintiff-Appellant,

v.

GLOBAL TEL LINK, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Central District of Illinois.

No. 23-cv-1152

Michael M. Mihm,
Judge.

ORDER

Keon Lipscomb, an Illinois inmate, alleges he has been denied access to content on an electronic tablet sold by the telecommunications company, Global Tel Link (“GTL”). He invoked 42 U.S.C. § 1983 and sued GTL and officials at the Illinois Department of Corrections for constitutional violations in connection with the restricted

* 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).

content. The district court dismissed his complaint for failure to state a claim. We affirm in part, vacate in part, and remand for further proceedings.

We accept the facts alleged in Lipscomb's complaint as true and review them in the light most favorable to him. *Thomas v. Neenah Joint Sch. Dist.*, 74 F.4th 521, 522 (7th Cir. 2023). Lipscomb, who is incarcerated at Menard Correctional Center in Chester, Illinois, bought an electronic tablet, which GTL advertised at the prison as containing unlimited books, movies, songs, and applications. But when he tried to use his tablet to access this content—for example, the Qur'an, a James Patterson book, and various music—most of his requests resulted in a message stating "error" or "restricted." Lipscomb was particularly upset that his request for access to the Qur'an was rejected as "restricted." He filed grievances with the prison over the restrictions but never received a remedy or an explanation.

Lipscomb then brought this suit alleging violations of the Due Process Clause, Equal Protection Clause, and First Amendment. He also brought three claims under state law.

The district judge screened the complaint, *see* 28 U.S.C. § 1915A, and dismissed it for failure to state a claim. With regard to Lipscomb's First Amendment claim, the judge acknowledged that a similar claim filed by another prisoner in the Southern District of Illinois had been allowed to proceed past screening. *See Fejerang v. G.T.L.*, No. 23-CV-01283-SMY, 2023 WL 6605476, at *3 (S.D. Ill. Oct. 10, 2023). The judge, however, stated that he disagreed with the Southern District's determination because a prisoner has no constitutional right "to receive and consume various media by a specific method of a prisoner's choosing."

From there, the judge read Lipscomb's complaint as alleging only he could not access the desired materials on the GTL tablet, not that any defendant or the Illinois Department of Corrections imposed a broader denial on access to the Qur'an or any other approved book, song, or film. As for Lipscomb's claims under the Fourteenth Amendment, the judge concluded the allegations did not support any theory of relief.

Finally, the court concluded the facts were clearly alleged, and allowing amendment would be futile. The court then relinquished supplemental jurisdiction over the state-based claims. *See* 28 U.S.C. § 1367(c).

On appeal, Lipscomb challenges the district judge's dismissal of his complaint. He asserts that the judge glossed over his constitutional claims, disregarded his rights to access religious materials, and reached a decision on his First Amendment claim that was inconsistent with the Southern District's ruling in *Fejerang*.

We begin with Lipscomb's First Amendment claim regarding restricted access to content on his tablet. The First Amendment right to free speech generally includes the right to read. See *Miller v. Downey*, 915 F.3d 460, 463–64 (7th Cir. 2019) (periodicals); *King v. Fed. Bureau of Prisons*, 415 F.3d 634, 638–39 (7th Cir. 2005) (books); see also *Brown v. Phillips*, 801 F.3d 849, 854–55 (7th Cir. 2015) (movies and video games); *Lindell v. Frank*, 377 F.3d 655, 657–58 (7th Cir. 2004) (picture postcards). But we cannot tell from Lipscomb's complaint whether he alleged an outright denial of access to materials like the Qur'an (a claim that implicates the First Amendment) or instead whether his complaint is that the GTL tablet did not contain the materials he expected it to contain (a claim better understood as a matter of contract law).

Presuming the latter, the district court concluded that Lipscomb could not state a First Amendment claim, and that further opportunity to amend would be futile. We have stated, however, that it is "a somewhat unorthodox practice" to close a case at its first dismissal, *Chaudhry v. Nucor Steel-Indiana*, 546 F.3d 832, 839 (7th Cir. 2008), and in pro se prisoner cases, deficient pleadings should be dismissed "with leave to replead, rather than ... with prejudice." *Perez v. Fenoglio*, 792 F.3d 768, 783 (7th Cir. 2015); see also *Childress v. Walker*, 787 F.3d 433 (7th Cir. 2015); *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014 (7th Cir. 2013). Under these circumstances, we believe that the case should be remanded so that Lipscomb has an opportunity to amend his complaint and clarify the nature of his First Amendment restricted-access claim.

Lipscomb next challenges the dismissal of his claim under the Free Exercise Clause of the First Amendment. But to state a free exercise claim, Lipscomb needed to allege that his religious practice has been substantially burdened by the restrictions on his tablet, see *Kaufman v. Pugh*, 733 F.3d 692, 697 (7th Cir. 2013), and this he has not done.

Lastly, we also agree with the district court that Lipscomb's allegations did not give rise to a claim under the Due Process or Equal Protection Clauses of the Fourteenth Amendment.

We therefore VACATE the district court's dismissal of Lipscomb's First Amendment restricted-access claim, AFFIRM in all other respects, and REMAND for further proceedings.