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3-13-2012

## Jesse Keel v. Aria Frankford Hospital

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 11-4404

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JESSE LEE KEEL, III,  
Appellant

v.

ARIA FRAKFORD HOSPITAL (Bucks); KATHY  
WISHIEWSKI; FEDERAL DEFENDER OFFICE

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. Civ. No. 11-cv-07148)  
District Judge: Honorable Gene E.K. Pratter

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Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)  
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6  
February 16, 2012

Before: FUENTES, GREENAWAY, JR. and NYGAARD, Circuit Judges

(Opinion filed: March 13, 2012)

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OPINION

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PER CURIAM

Jesse Lee Keel, III, appeals from the District Court's dismissal of his complaint. We will affirm. Keel, who is not a prisoner, filed a complaint alleging that his dentures were misplaced during a visit to Aria Frankford Hospital and seeking \$4200 in order to

replace them. As defendants, he named the hospital, one of its employees, and the Federal Public Defender. He alleges that the hospital's employee promised to work with him and his insurance company but that he has received no response. He makes no allegations about the Federal Public Defender.<sup>1</sup>

On November 18, 2011, the District Court granted Keel leave to proceed in forma pauperis and dismissed his complaint as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i) because he did not allege that anyone acting under color of law had deprived him of a constitutional right. Keel appeals. We have jurisdiction under 28 U.S.C. § 1291. We review the dismissal of a complaint as frivolous for abuse of discretion, see Denton v. Hernandez, 504 U.S. 25, 33 (1992), and we perceive none here. Keel stated no basis for a federal claim. Nor do his allegations suggest that he could do so by amendment. See Phillips v. Cnty. of Allegheny, 515 F.3d 224, 245 (3d Cir. 2008). To the contrary, Keel's notice of appeal reaffirms that he seeks merely the replacement of his dentures. For Keel's benefit, we note that the District Court's dismissal is not a ruling on the merits. See Denton, 504 U.S. at 34. It thus does not prevent him from seeking relief in state court, though we express no opinion on whether relief might be appropriate.

For these reasons, we will affirm the judgment of the District Court. Appellant's motion for appointment of counsel is denied.

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<sup>1</sup> Keel attached a public defender investigation report describing an interview with a witness to his efforts to reclaim his dentures, which apparently included a call to his congresswoman. This report appears to have been prepared in connection with a criminal proceeding involving charges of threatening the congresswoman's staff. Keel makes no allegations about that proceeding in his complaint.