

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-2493

David A. Gingras,

Appellant,

v.

Kraig Wood; Tony Harrison; Mark
Black; Mike Walker; John Griswold;
Pat West; Misti Walker; Jeff Goble,

Appellees.

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* Appeal from the United States
* District Court for the
* District of South Dakota.
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* [UNPUBLISHED]
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Submitted: September 18, 2008
Filed: September 24, 2008

Before MURPHY, BYE, and BENTON, Circuit Judges.

PER CURIAM.

David Gingras appeals the district court's¹ adverse grant of summary judgment in his 42 U.S.C. § 1983 action. We agree with the district court that, because Gingras's complaint was silent as to the capacity in which he was suing defendants, his complaint was properly construed as asserting only official-capacity claims, see Baker v. Chisom, 501 F.3d 920, 923 (8th Cir. 2007) (noting that if plaintiff's

¹The Honorable Karen E. Schreier, Chief Judge, United States District Court for the District of South Dakota.

complaint is silent about capacity in which he is suing defendant, court interprets complaint as including only official-capacity claims), and, as such, those claims failed, see Robb v. Hungerbeeler, 370 F.3d 735, 739 (8th Cir. 2004) (official-capacity suit is treated as suit against entity); Ware v. Jackson County, Mo., 150 F.3d 873, 880 (8th Cir. 1998) (plaintiff may establish municipal liability under § 1983 by proving his constitutional rights were violated by action pursuant to policy or by misconduct so pervasive as to constitute custom); Morstad v. Dep't of Corr. and Rehab., 147 F.3d 741, 743 (8th Cir. 1998) (Eleventh Amendment bars suit against state or state officials acting in official capacities). Accordingly, we affirm. See 8th Cir. R. 47B.
