

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40915
Summary Calendar

LEWIS HARPER,

Plaintiff-Appellant,

versus

DAVID DOUGHTY, ADJETEY K. LOMO, DR.; JOHN STENNER,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. G-98-CV-513

March 2, 2001

Before GARWOOD, DAVIS and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Lewis Harper, Texas prisoner #415488, appeals from the grant of summary judgment for the defendants and the dismissal of his 42 U.S.C. § 1983 action as frivolous. Harper contends that his work assignment to field work despite his asthma constituted deliberate indifference to his health.

The pleadings and the record indicated no genuine issues of material fact regarding whether officials were deliberately indifferent to Harper's asthma when assigning Harper to field work. See *Reeves v. Collins*, 27 F.3d 174, 176-77 (5th Cir.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

1994); *GATX Aircraft Corp. v. M/V COURTNEY LEIGH*, 768 F.2d 711, 714 (5th Cir. 1985). Moreover, because the evidence established that Harper's mild asthma was not significantly exacerbated by his work assignment, the district court did not abuse its discretion by dismissing Harper's action as frivolous. See *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997); *Mendoza v. Lynaugh*, 989 F.2d 191, 194 (5th Cir. 1993).

The dismissal of Harper's action as frivolous by the district court counts as a "strike" against Harper for purposes of 28 U.S.C. § 1915(g). Once Harper accumulates three "strikes," he may proceed in forma pauperis (IFP) in civil actions or appeals while imprisoned only if he "is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

AFFIRMED; SANCTIONS WARNING ISSUED.