

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

March 18, 2008

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No. 07-20192  
Summary Calendar

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Charles R. Fulbruge III  
Clerk

THOMAS EDWARD BIRMINGHAM

Plaintiff-Appellant

v.

NATHANIEL QUARTERMAN; THOMAS PRASIFKA; LIEUTENANT JOHN  
DOE; DR OWEN J MURRAY; GINA M SEVILLE; DR MERIDETH WARNER

Defendants-Appellees

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:05-CV-2743

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Before KING, DAVIS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Thomas Edward Birmingham, Texas prisoner # 1244911, appeals the district court's summary judgment dismissal of his 42 U.S.C. § 1983 complaint against various Texas Department of Criminal Justice (TDCJ) officials and physicians. Birmingham argued in his complaint that the defendants acted with deliberate indifference to his serious medical needs after he broke his foot while in prison.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

In his opening brief, Birmingham argues only that the district court erred in not requiring the defendants to provide him with copies of his x-rays as part of his medical records and that discovery was incomplete as a result. Birmingham also lists the following additional issues without any supporting argument: (1) whether the district court erred in granting summary judgment without notifying Birmingham of his right to amend his complaint, and (2) whether the district court abused its discretion in denying his request for appointment of counsel. Because Birmingham does not argue any of his deliberate indifference claims, nor does he challenge any of the district court's determinations concerning those claims, and because Birmingham has not briefed the complaint amendment and appointment of counsel issues, Birmingham has abandoned his deliberate indifference claims and the two listed issues. See *Geiger v. Jowers*, 404 F.3d 371, 373 n.6 (5th Cir. 2005). In a reply brief, Birmingham for the first time on appeal argues the merits of his substantive claims against some of the defendants. However, we do not consider arguments that are raised for the first time in a reply brief. See *Cinel v. Connick*, 15 F.3d 1338, 1345 (5th Cir. 1994).

As to Birmingham's argument that the district court erred in failing to provide him with his x-rays and that his discovery was incomplete as a result, Birmingham was provided with radiologists' reports concerning the x-rays, and he has not shown how his or the district court's untrained analysis of the actual x-rays would have created a genuine issue of material fact concerning the issue whether the defendants acted with deliberate indifference to his medical needs. See FED. R. CIV. P. 56(c), (f). Accordingly, Birmingham has not shown that the district court abused its discretion in denying his request for the x-rays. See *Krim v. BancTexas Group, Inc.*, 989 F.2d 1435, 1441 (5th Cir. 1993).

**AFFIRMED; MOTION FOR APPOINTMENT OF COUNSEL DENIED.**