IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 13-20427
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
June 26, 2014
Lyle W. Cayce
Clerk

DENNIS ALAN DAVIS,

Plaintiff-Appellant

v.

LANETTE LITHICUM, In her individual and official capacity; STEPHANIE ZAPEDA, in her individual and official capacity; BETTY WILLIAMS, In her individual and official capacity; ROBERT M. SANDMANN, in his individual and official capacity,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:11-CV-2755

Before WIENER, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Dennis Alan Davis, Texas prisoner # 498745, filed a pro se, in forma pauperis (IFP) 42 U.S.C. § 1983 complaint against Stephanie Zapeda, the Director of the state's Correctional Managed Care (CMC); Lanette Lithicum, the TDCJ District Medical Director; Betty Williams, a physician at

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the Ellis Unit; and Robert M. Sandmann, a pharmacist at the CMC Pharmacy. Davis alleged that he had a documented history of restless leg syndrome (RLS) and that the defendants were deliberately indifferent to his serious medical needs when they denied him the prescribed drug, Mirapex, and failed to provide an alternative course of treatment. The district court dismissed Davis's claims as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B), concluding they lacked merit as a matter of law.

As an initial matter, Davis, in his complaint and more definite statement, made very specific claims against Lithicum and Zapeda regarding the creation and implementation of policies and procedures concerning the CMC Pharmacy and their failure to intervene when he was denied Mirapex. On appeal, however, he does not expressly renew his claims against those two officials, addressing only his claims against Sandmann and Williams, and generally complaining of TDCJ pharmaceutical policies. Accordingly, Davis has abandoned his claims against Lithicum and Zapeda. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

A district court may dismiss an IFP complaint as frivolous if it has no arguable basis in law or fact. *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997); § 1915(e)(2)(B)(i). A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). We review the district court's dismissal of a complaint as frivolous pursuant to § 1915(e)(2)(B)(i) for abuse of discretion. *Brewster v. Dretke*, 587 F.3d 764, 767 (5th Cir. 2009).

Prison officials violate the constitutional prohibition against cruel and unusual punishment when they demonstrate deliberate indifference to a prisoner's serious medical needs, resulting in unnecessary and wanton infliction of pain. *Wilson v. Seiter*, 501 U.S. 294, 297 (1991). A prison official

acts with deliberate indifference "only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). "Deliberate indifference is an extremely high standard to meet." *Domino v. Texas Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001).

With regard to the claim that Sandmann was deliberately indifferent to Davis's serious medical needs by refusing to fill his prescription for Mirapex, in contravention of an outside physician's order, the uncontroverted evidence reflects that Sandmann denied Mirapex because of its high degree of psychological side effects and because it was generally not used in the prison population. Moreover, we give "great deference to prison administrators' judgments regarding jail security" and management of prisons. *Oliver v. Scott,* 276 F.3d 736, 745 (5th Cir. 2002); *Clarke v. Stalder*, 121 F.3d 222, 229 (5th Cir. 1997).

Davis's claim that Williams was deliberately indifferent when she failed to appeal Sandmann's denial of Mirapex is also without merit. A prison official's failure to follow prison procedural rules does not, without more, give rise to a constitutional violation. *See Myers v. Klevenhagen*, 97 F.3d 91, 94 (5th Cir. 1996). Furthermore, given that the denial of Mirapex was based on its adverse psychological side effects and its contraindicated use in prison settings, Williams's discretionary decision not to appeal was both a judgment regarding medical treatment and one regarding the application of prison policies and practices designed to maintain and preserve internal order. *See McCord v. Maggio*, 910 F.2d 1248, 1251 (5th Cir. 1990).

We also reject, as without merit, Davis's claim that Sandmann and William were deliberately indifferent for failing to prescribe an alternative course of treatment. As Davis complained of his RLS infrequently following

the denial of Mirapex, he has not demonstrated that Sandmann and Williams knew that he faced a substantial risk of serious medical harm yet failed to take steps to abate that harm. *See Farmer*, 511 U.S. at 847. Further, any deficiencies or delays in Davis's care fell far short of the "cold hearted, casual unwillingness to investigate what can be done for a man who is obviously in desperate need of help" that we have recognized as necessary to constitute deliberate indifference. *Fielder v. Bosshard*, 590 F.2d 105, 108 (5th Cir. 1979). In any event, the failure to prescribe an alternative course of treatment at most amounted to medical malpractice or negligence, which are insufficient to establish a constitutional violation. *See Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006). The judgment of the district court is affirmed.

The district court's dismissal of Davis's complaint and our affirmance of the dismissal count as one strike for purposes of § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Davis is warned that, if he accumulates three strikes, he will be barred from proceeding IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).

AFFIRMED; SANCTION WARNING ISSUED.