

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

March 31, 2014

Lyle W. Cayce
Clerk

No. 13-60210
Summary Calendar

MITCHELL LEE WEBER,

Plaintiff - Appellant

v.

DOCTOR R. MCMICHAEL, Forensic Administrator; DOCTOR MARTHA MURRAY, Staff Psychiatrist; MISSISSIPPI DEPARTMENT OF MENTAL HEALTH,

Defendants - Appellees

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:09-CV-482

Before JONES, BARKSDALE, and HAYNES, Circuit Judges.

PER CURIAM:*

Mitchell Lee Weber, a civilly-committed patient in the Mississippi State Hospital (MSH), appeals the summary-judgment dismissal of his action, filed pursuant to 42 U.S.C. § 1983. Weber asserts he should be transferred to a less secure unit at MSH and afforded additional grounds privileges. He contends

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Defendants confine him to the maximum security unit because they have a personal vendetta against him.

A summary judgment is reviewed *de novo*. *E.g.*, *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007). Summary judgment is appropriate if the record discloses “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law”. Fed. R. Civ. P. 56(a).

Weber, diagnosed with paranoid schizophrenia and a personality disorder with antisocial features, was admitted to psychiatric hospitals eight times between 1975 and 1996. Each hospitalization occurred after he threatened to harm, or harmed, others. Four of these hospitalizations ended when Weber escaped.

In 1994, Weber was civilly committed to MSH, housed in a less secure unit, and given unescorted grounds privileges; however, he escaped in 1996. Three months later, he impersonated a police officer and attacked a MSH psychiatrist in her home. Weber pleaded guilty to these crimes, was sentenced to 30 days in jail, and was civilly committed to MSH for 90 days. In October 1996, the Hinds County Chancery Court extended his commitment indefinitely.

After arriving at MSH, Weber was admitted to the maximum security unit, known as the Forensic Service Unit (FSU), due to his “overt acts of dangerousness and propensity to elope”. Weber’s treatment team (composed of psychiatrists, psychologists, nurses, and a social worker) prepares his treatment plans, which are updated annually. Several of these treatment plans note Weber does not appreciate the nature and extent of his mental illness, or its relationship to his aggressive behavior, escape risk, and interpersonal conflicts with staff members and patients. Accordingly, his

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treatment team has always been of the opinion that Weber would present a danger to himself and others if treated in a less secure unit.

MSH's Discharge Advisory Committee (Committee) shares this opinion. The Committee determines whether high-risk patients should be afforded additional privileges within FSU or transferred to less secure units. In 1998, 2003, and 2007, Weber challenged his treatment team's decision denying him grounds privileges. In 1998 and 2003, the Committee recommended Weber be denied those privileges because he was an escape risk and would present a significant risk to public safety. In 2007, the Committee concluded Weber remained a high risk for violence. As a result, he was granted only limited-escorted grounds privileges.

Defendants' treatment decisions (treating Weber in the FSU with limited-escorted grounds privileges) are presumptively valid. *See Youngberg v. Romeo*, 457 U.S. 307, 323 (1982). Weber failed to present competent evidence overcoming this presumption, and, therefore, has failed to establish a constitutional violation. *See id.* at 323 n.31 (noting expert testimony "may be relevant to whether [treatment] decisions" substantially depart from professional judgment, practice, or standards).

AFFIRMED.