

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

May 22, 2023

Lyle W. Cayce  
Clerk

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No. 22-40674

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LINDSEY BAGE, *Individually and as the heir of Kirk Andrew Swartz, and as representative of* THE ESTATE OF KIRK ANDREW SWARTZ,

*Plaintiff—Appellant,*

*versus*

GALVESTON COUNTY; SHERIFF HENRY TROCHESSET; DOCTOR GARRY KILLYON; BOON-CHAPMAN BENEFIT ADMINISTRATORS, INCORPORATED; SOLUTA, INCORPORATED; SOLUTA HEALTH, INCORPORATED; KATHY WHITE, *also known as* KATHY JEAN JORDAN,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 3:20-CV-307

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Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:\*

Kirk Andrew Swartz passed away while incarcerated at the Galveston County Jail. Lindsey Bage filed suit as Swartz's heir and representative of his

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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estate, arguing that myriad individuals' deliberate indifference to Swartz's serious medical needs and delayed medical care caused his death. Bage also contends that relevant municipal and organizational policies and procedures were deficient, leading directly to the delayed medical care that in turn purportedly caused Swartz's death.

First, a threshold issue: does Bage have standing? Yes, concluded the magistrate judge, as Bage put forth at least some evidence that Swartz was her father, sufficient to confer standing under the Texas Wrongful Death Statute. Turning next to the substantive federal claims, the magistrate judge undertook a thorough analysis of the medical care and treatment the individual Defendants provided Swartz, concluding that the Bage "cannot establish" that the individual defendants "acted with deliberate indifference to Swartz's medical needs." Further, the magistrate judge reasoned, Bage could not demonstrate supervisory, municipal, or conspiracy liability where no underlying constitutional violation occurred. Absent any remaining federal claims, the magistrate judge recommended against exercising supplemental or pendent jurisdiction over state law claims.

A month after the report and recommendation was issued, and weeks after the Parties filed their respective objections, the district court adopted the report and recommendation in full. Bage timely appealed.

The judgment of the district court is AFFIRMED. We find no reversible error of law or fact and affirm essentially for the reasons stated in the magistrate judge's thorough and exhaustive report, adopted by the district court as its opinion.