

IN THE UNITED STATE COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 88-2713

Kartis Ewing,

Plaintiff-Appellant,

versus

Jack Heard, et al.,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas
No. CA-H-86-4145

(February 3, 1993)

Before WILLIAMS and WIENER, Circuit Judges, and LITTLE, District Judge.*

Per Curiam**

In this 42 U.S.C. § 1983, the Plaintiff-Appellant, Kartis Ewing, appeals the dismissal of his claims of use of excessive force and of denial of medical care against Defendant-Appellees, Jack Heard, former sheriff of Harris County, Texas, and J. H.

*District Judge for the Western District of Louisiana, sitting by designation.

**Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Murphy, J. R. Dixon, D. L. Jones, R. Woods, and T. C. Wright, deputies at the Harris County Jail. Finding that the district court erred in dismissing this action, we reverse and remand.

I.

FACTS AND PROCEEDINGS

In November of 1982, Ewing was shot three times during the commission of a crime. He underwent surgery and remained hospitalized in Houston until December of 1982 when he was released into the custody of the sheriff of Harris County. Ewing claims that in March of 1983, while he was confined to the hospital facilities at the Harris County Jail, he was assaulted by two deputies when he refused to give up his blanket. He alleges that the deputies caught him in a choke hold, twisted his injured arm and re-broke his clavicle, which had been broken in the shooting. At the time, he was a pre-trial detainee.

Approximately two months later, Ewing was released from the hospital facilities at the jail and transferred to a hold-over cell. While there, he contends, he experienced physical problems and requested medical assistance. He maintains that the deputies denied him the medical attention he sought, and instead moved him to a basement room where one deputy "repeatedly str[uck] him in the face, hands and body with his fists." Thereafter, he was taken to the jail infirmary where he was x-rayed. Ewing states that he could hardly walk, talk or chew for 12 days because of the severity

of the beating, but that the infirmary did nothing more than give him two aspirin and an injection, the contents of which he has not identified.

Some four years later, Ewing filed a § 1983 action against the former sheriff of Harris county and five deputies assigned to the Harris County Jail, alleging excessive use of force and denial of medical care. A hearing was held at the jail pursuant to Spears v. McCotter,¹ and the district court dismissed Ewing's complaint as frivolous, pursuant to 28 U.S.C. § 1915(d), concluding that Ewing failed to state a claim for use of excessive force or for denial of medical care, and that his action was untimely. Ewing timely appealed.

Finding that the district court erred in its determination that the action was untimely, and that the district court applied an incorrect standard to the claim for denial of medical care, we reverse and remand to allow the court to apply the correct standard to Ewing's claim for denial of medical care, and to consider Ewing's claim of excessive force under Valencia v. Wiggins² and Hudson v. McMillian.³

II.

ANALYSIS

¹766 F.2d 179 (5th Cir. 1985).

²981 F.2d 1440 (5th Cir. 1993).

³962 F.2d 522 (5th Cir. 1992).

A. Evidence at the Spears Hearing

Other than Ewing's testimony, the only evidence presented his Spears hearing came in the form of some of Ewing's medical records. In its opinion dismissing the case, the district court stated that the medical director of the Harris County jail, Dr. Ronald Haley, read from Ewing's medical records at the hearing. Dr. Haley is not identified on the Spears hearing tape, however, and neither do the courtroom minutes or transcript of the hearing indicate that anyone other than an attorney for the defendants was present. The transcript of the Spears hearing indicates that information was read from the medical records by the attorney for Harris County. There is nothing in the record to indicate that the medical records were authenticated; neither were the medical records placed into evidence. The medical records therefore do not comprise part of the record before this court.

The district court dismissed Ewing's case as frivolous pursuant to 28 U.S.C. § 1915(d). Although we give broad discretion to district courts in conducting Spears hearings, the use of unauthenticated records or unsworn testimony to counter the plaintiff's testimony is improper.⁴ "[T]he most important consideration in a § 1915(d) credibility assessment is the inherent

⁴See Wilson v. Barrientos, 926 F.2d 480 (5th Cir.), clarified on reh., 926 F.2d 483, 483 (1991)(It is improper, in the context of a Spears hearing, to "accomplish expedient fact-finding by reviewing unauthenticated records and accepting unsworn testimony.") See also Gilbert v. Collins, 905 F.2d 61 (5th Cir. 1990).

plausibility of a prisoner's allegations based on objective factors...."⁵

Ewing alleges an incident of excessive force that resulted in a refractured clavicle, an inherently plausible allegation. But the district court, relying on what appears to be unauthenticated medical records, determined that no injury occurred. Ewing's testimony was to the contrary; he questioned the accuracy and completeness of the medical records, and named the physician who had treated Ewing's injury and had told him that his clavicle had been refractured. That physician was not present at the Spears hearing.

As the district court relied on unauthenticated medical records presented by a layman in the absence of a physician, and as the Defendants presented no other evidence to counter Ewing's assertions, the district court erred in dismissing this case as frivolous.

B. The Excessive Force Claim

Recently, in the wake of Hudson v. McMillian, we recognized a new standard for the evaluation of excessive force claims made by pretrial detainees.⁶ We now understand that the constitutional standard to be applied to pretrial detainees under the Fourteenth Amendment is the same as that applied to convicted prisoners under

⁵Cay v. Estelle, 789 F.2d 318, 326 (5th Cir. 1986).

⁶See Valencia, 981 F.2d at 1440.

the Eighth Amendment. Henceforth, all excessive force claims are to be judged by the standard enunciated in Hudson.

In pretrial detention situations prior to Hudson, we applied a substantive due process standard. That standard, enunciated in Shillingford v. Holmes,⁷ is the standard that the district court applied in the instant case.⁸ Because that is no longer the law of this circuit, we reverse the district court and remand the case for consideration in light of Hudson v. McMillian and Valencia v. Wiggins.

C. Denial of Medical Care Claim

The district court applied an incorrect standard to Ewing's pre-trial situation. It said:

The appropriate standard in determining whether an inmate has stated a claim for denial of medical care is whether he has suffered "deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 104 (1976).

This was in fact inappropriate. Estelle is the standard for convicted prisoners and is based on the Eighth Amendment. The year before the district court's opinion, we differentiated pretrial detainees from convicted prisoners for the purpose of assessing a denial of medical care claim. Relying heavily on Bell v. Wolfish,⁹ which considered pretrial conditions of confinement, we held in

⁷634 F.2d 263 (5th Cir. 1981).

⁸The district court, without announcing its reasons, concluded that Ewing failed to meet the test as set forth in Shillingford.

⁹441 U.S. 520 (1979).

Cupit v. Jones¹⁰ that "pretrial detainees are entitled to reasonable medical care unless the failure to supply that care is reasonably related to a legitimate governmental objective."¹¹

We are constrained to reverse the district court's conclusion for a second reason. In Thomas v. Kippermann¹² (coincidentally released the day after the instant district court opinion), we applied the Cupit standard to a pretrial detainee's claim of denial of medical care. In finding that the plaintiff's claim stated a § 1983 action under Cupit, we said:

[The pretrial detainee's] allegations of denial of reasonable medical care implicate more than mere negligence. [His] claim could meet the standard of denial of reasonable medical care if he told jail authorities that he needed his prescribed medication (as he alleged at his Spears hearing) and if they did not have him examined or otherwise adequately respond to his requests. There is no indication that the district court had before it [his] medical records from the Harris County Jail. Absent these records, the record before the district court was inadequate to rebut [his] allegations sufficiently to support either Rule 12 of § 1915(d) dismissal on this point.¹³

Because the district court in the instant case relied on unauthenticated medical records, it was tantamount to that court's having no records before it at all. Therefore, there was no evidence to rebut Ewing's assertions. This compounded the court's error in applying the incorrect standard to Ewing's denial of

¹⁰835 F.2d 82 (5th Cir. 1987).

¹¹Id. at 85.

¹²846 F.2d 1009 (5th Cir. 1988).

¹³Id. at 1011 (emphasis added).

medical care claim. Under those circumstances, the district court erred in dismissing this case, so we must remand for the district court to apply the correct standard and consider properly authenticated evidence.

D. Statute of Limitations

The district court also held that Ewing's suit was not timely filed. The Defendants have expanded this holding by attempting to argue the equitable doctrine of laches, thereby preventing us from reaching the merits of the case. The district court's conclusion of time bar was incorrect, and the Defendants' laches argument is frivolous.

In § 1983 suits, federal courts borrow the forum state's general personal injury limitations period.¹⁴ A federal court applying a state statute of limitations should also give effect to the state's tolling provision for prisoners.¹⁵

Ewing filed this lawsuit in November of 1986. At that time, § 16.001 of the Texas Civil Practice and Remedies Code, as enacted in 1985, provided that imprisonment was a disability that tolled the running of the statute of limitations. Section 16.001 was not

¹⁴Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989).

¹⁵Id.

amended until 1987 to state that imprisonment would no longer be considered a legal disability in Texas.¹⁶

The record supports the assumption that Ewing was continuously imprisoned from November 1982 to the present time. Therefore, even though Ewing did not file suit until almost three and one half years after the accrual of his cause of action, his suit was not untimely in light of § 16.001.

III.

CONCLUSION

As the district court erred in (1) considering unauthenticated medical records, (2) applying an incorrect standard to Ewing's denial of medical care claim, and (3) incorrectly concluding that Ewing's action was time barred; and as that court also tested Ewing's excessive force claim under a standard that is obsolete in light of Hudson v. McMillian and Valencia v. Wiggins, we REVERSE the district court's dismissal and REMAND for further proceedings consistent herewith.

¹⁶Id. at 419.