UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 91-8415
Summary Calendar

JEANNETTE JENKINS,

Plaintiff-Appellant,

VERSUS

JAMES A. LYNAUGH, Director, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(W 91 CA 73)

December 23, 1992

Before KING, DAVIS and WIENER, Circuit Judges.

DAVIS, Circuit Judge.[1]

Jenkins appeals the § 1910(d) dismissal of her § 1983 suit against prison officials. We affirm in part and vacate and remand in part.

I.

Jeannette Jenkins, a state prisoner incarcerated at the Mountain View Unit of the Texas Department of Criminal Justice, filed this pro se civil rights action against James A. Lynaugh,

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[1] 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Director of TDCJ, Catherine M. Craig, warden, and Patrick Anderson and Charlotte Walker, correctional officers at the Unit, alleging an excessive use of force by Anderson and Walker. R. 23-31. She claimed that when she refused to obey an order to release another inmate's arm, Anderson threw her to the floor and began choking and hitting her in an unprovoked, malicious, and unnecessary use of force. She alleged that Walker assisted Anderson by sitting on her legs while Anderson was sitting on her chest. She claimed that Lynaugh and Craig should be held responsible for these actions based on respondeat superior because of their knowledge and acquiescence as they knew or should have known of their subordinates' illegal conduct. She further alleged that Lynaugh and Craig showed deliberate indifference and tacitly authorized the offensive acts. Jenkins also made allegations of inadequate supervision, training, control and discipline. She also made claims related to subsequent disciplinary proceedings brought against her and a failure to photograph her injuries.

After a **Spears** hearing (**Spears v. McCotter**, 766 F.2d 179 (5th Cir. 1985)), the district court dismissed the suit as frivolous pursuant to 28 U.S.C. § 1915(d). The court found that Jenkins' excessive force claim failed because she had failed to show that her injuries were significant. The court dismissed her claims against Lynaugh and Craig because she failed to state with particularity any facts showing that they were personally involved in the alleged violations or had affirmed or actively

adopted policies which were wrongful or illegal. The court also dismissed her claims related to her disciplinary proceedings and the failure to take photographs. Jenkins does not appeal those issues.

II.

A.

Jenkins argues first that she has stated a case of excessive use of force. She contends that the use of force was objectively unreasonable, clearly excessive to the need, and constituted an unnecessary and wanton infliction of pain.

A § 1915(d) dismissal is reviewed for abuse of discretion. **Denton v. Hernandez**, ___ U.S. ___, 112 S.Ct. 1728, 1734, 118 L.Ed.2d 340 (1992). A district court may dismiss an **in forma pauperis** complaint if it is frivolous, that is, if it lacks an arguable basis either in law or in fact. **Id**.

Subsequent to the district court's dismissal of Jenkins' suit, the Supreme Court held that a prisoner may suffer a violation of the Eighth Amendment when prison guards use unnecessary force even though his injuries are not "significant." **Hudson v. McMillian**, ___ U.S. ___, 112 S.Ct. 995, 1000, 117 L.Ed.2d 156 (1992).

Hudson holds that "[w]hen prison officials maliciously and sadistically use force to cause harm," the Eighth Amendment is violated, whether or not significant injury is evident. 112 S.Ct. at 1000. "[**D**]**e minimis** uses of physical force," however, are not proscribed. **Id**. Thus, the district court's finding that

Jenkins did not sustain a significant injury does not end the Eighth Amendment inquiry.

To determine whether the use of force was wanton and unnecessary, a court should evaluate: (1) the extent of the injury; (2) the need for the application of force; (3) the relationship between that need and the amount of force used; (4) whether a threat was reasonably perceived by responsible officials; and (5) any efforts made to temper the severity of a forceful response." **Hudson**, 112 S.Ct. at 999. **See also Shabazz v. Lynaugh**, 974 F.2d 597, 598 (5th Cir. 1992).

We vacate the district court's ruling for reconsideration in light of **Hudson** insofar as it dismisses Jenkins's excessive force claim against Anderson and Walker. **Shabazz**, 974 F.2d at 598.

B.

Jenkins argues next that the district court erroneously held that respondeat superior principles do not apply to Craig, the warden. She argues that Craig had a responsibility to supervise her subordinate officers and to investigate uses of force at Mountain View Unit. She contends that Craig failed in this responsibility, since she participated in the Internal Affairs investigation and the taking of statements but did not discipline the officer. She alleges that Anderson has been involved in several incidents of excessive use of force at this Unit but has only been disciplined a few times. She argues that there is a causal connection between Craig's actions and the constitutional violation. Jenkins admits that she produced no evidence of

Lynaugh's involvement and states that she desires to delete Lynaugh as a defendant.

Under § 1983, supervisory officials are not liable for the actions of subordinates on any theory of vicarious liability. A supervisor may be held liable if either 1) the supervisor is personally involved in the constitutional deprivation, or 2) there is a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. Even without personal involvement, a supervisor may be liable if he implements a policy so deficient that the policy itself is a repudiation of constitutional rights and is the moving force of the constitutional violation. **Thompkins v. Belt**, 828 F.2d 298, 303-04 (5th Cir. 1987).

Allegations of negligent failure to supervise do not state a claim under § 1983. **Lozano v. Smith**, 718 F.2d 756, 769 n.31 (5th Cir. 1983). Supervisory officials may be liable when a failure to supervise amounting to gross negligence or deliberate indifference proximately causes the constitutional violation. **Bowen v. Watkins**, 669 F.2d 979, 988 (5th Cir. 1982). Usually, a failure to supervise gives rise to § 1983 liability only when there is a history of widespread abuse. In that case, knowledge may be imputed to the supervisory official, and he can be found to have caused the later violation by his failure to prevent it. **Id**.

This Court has vacated summary dismissals of civil rights cases against supervisory officials where the plaintiffs alleged

patterns of widespread abuse of which the supervisors must have been aware. **See Sims v. Adams**, 537 F.2d 829, 831-32 (5th Cir. 1976) and **Holland v. Connors**, 491 F.2d 539, 541-42 (5th Cir. 1974). In **Sims**, the plaintiff asserted liability against the supervisory defendants based on allegations that they subjected Atlanta citizens to a systemic pattern of racial violence by the police. They alleged that the supervisory defendants knew or should have known of a particular officer's prior violent misconduct represented by pending complaints, and that they failed to discipline him or prevent further violence.

This court held that the complaint stated a cause of action against the supervisors because they allegedly breached the duties of a mayor and a chief of police to control a policeman's known propensity for improper use of force. **Sims**, 537 F.2d at 832. In **Holland**, the plaintiff alleged that the prison superintendent was liable for an attack on him by prison guards because such practices had been so widespread for so long that the superintendent must have been aware of them. This court found the allegations sufficient to state a claim. 491 F.2d at 541.

Jenkins's allegations in her brief of past instances of excessive use of force by Anderson which have gone undisciplined might have been enough to state a claim if she had made these allegations in the district court. However, her complaint does not allege any past uses of force by Anderson of which Craig should have been aware.

In her objections to the Magistrate Judge's recommendation, Jenkins again does not make such allegations. She only alleges that Craig participated in the taking of statements for Internal Affairs and knew or should have known that the assault violated Jenkins's constitutional rights, but that Craig nonetheless failed to discipline her subordinate officers. Those allegations point to Craig's actions in relation to this particular incident, rather than a failure to investigate or discipline Anderson for past violations. At the **Spears** hearing, Jenkins stated that her only complaint against Craig was based on Craig's failure to allow her to photograph her injuries. The only document which refers to any past violations by Anderson is a motion for a temporary restraining order or a preliminary injunction in which Kimberly Brown, a writ writer, states that she has had numerous complaints about Anderson and has assisted in filing many grievances against him.

Based on the allegations in Jenkins's complaint and objections and at the **Spears** hearing, the district court did not abuse its discretion in dismissing the claims against Craig as frivolous. Her allegations did not meet the standards for imposing liability on supervisory officials and so lacked an arguable basis in law. We therefore affirm the district court's dismissal of Craig and Lynaugh.

AFFIRMED in part, VACATED and REMANDED in part.