IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1580
(Summary Calendar)

BILLY WAYNE HORTON,

Plaintiff-Appellant,

versus

COUNTY OF DALLAS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Northern District of Texas

(3:92-CV-0124-G)

(April 20, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:[*]

Plaintiff-Appellant Billy Wayne Horton, an inmate in the Texas prison system, appeals the district court's dismissal as frivolous, pursuant to 28 U.S.C. § 1915(d), of Horton's civil rights suit against the County of Dallas, a psychiatrist and a psychologist.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Finding no reversible error in the district court's conclusion that the portion of Horton's complaint that was not time-barred nonetheless lacked a basis in law, we affirm that court's judgment of dismissal.

I

FACTS AND PROCEEDINGS

Proceeding pro se and in forma pauperis (IFP), Horton filed a § 1983 complaint alleging the following facts. He was booked into the Dallas County Jail as a pretrial detainee to await outstanding charges. Approximately one week thereafter, after he complained about swollen wrists, a nurse looked at them and told Horton that they would heal in time. Two weeks later he requested medical treatment for swollen wrists and psychiatric treatment for diminished appetite and dizzy spells.

After Horton was assaulted by another inmate, he was moved to a different facility where his condition worsened. For about a month, Horton submitted requests for treatment to the infirmary. Eventually he was taken by wheelchair to a room next to the infirmary. There a nurse informed him that his temperature was low but that she could no nothing except schedule a psychiatric appointment. He was then put in a holding cell where he lost consciousness. A week later he was seen by a psychiatrist, then returned to his cell. Two weeks after that he saw the psychiatrist and a psychologist, was placed on a mild sedative, and was put in a solitary cell. In isolation Horton's condition continued to worsen; he began having more frequent dizzy spells, blackouts, and

loss of memory.

Over the next few months the psychiatrist increased Horton's medication. Horton repeatedly informed the psychiatrist and the psychologist that his condition was worsening by being placed in a solitary cell. The psychologist responded, "`we don't care if you don't eat, if you pass out we'll just force a tube down your nose to your stomach and force-feed you.'" On two occasions the doctors confiscated all of Horton's property so that he could not harm himself. Horton was in the observation cell for a total of four months when he was transferred to the Texas Department of Criminal Justice, Institutional Division (TDCJ).

Horton alleged that the psychiatrist and psychologist were liable for damages to him because they were concerned only with keeping him alive without regard to his diminished appetite. He further alleged that Dallas County has a policy of refusing its prisoners proper psychiatric care; that the jail policy was to sedate inmates rather than provide hospitalization or counseling.

In response to interrogatories propounded by a magistrate judge, Horton stated that his condition worsened on December 4, 1989, after he was placed in the solitary cell. Horton answered further that he was interviewed by the psychiatrist every two weeks during which time the psychiatrist increased Horton's medication on every other examination, until March 24, 1990, when Horton was transferred to the TDCJ.

The magistrate judge concluded that, as a two-year statute of limitations began to run no later than December 4, 1989, and as

Horton did not file his suit until January 21, 1992, the portions of his § 1983 claim arising from those acts or omissions that occurred before January 21, 1990, were time-barred. The magistrate judge further concluded, however, that Horton's claim that the psychiatrist improperly increased his medication was not time-barred. But the magistrate judge also determined that the unbarred claim lacked basis in law or fact and recommended that it be dismissed pursuant to 28 U.S.C. § 1915(d). After reviewing Horton's objections to the magistrate's recommendation, the district court adopted the findings, conclusions, and recommendation of the magistrate judge, and dismissed the complaint.

II

ANALYSIS

A district court may dismiss an IFP complaint as frivolous pursuant to § 1915(d) if the complaint is found to lack an arguable basis in either law or fact. Denton v. Hernandez, ____ U.S. ____, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992); Neitzke v. Williams, 490 U.S. 319, 328, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989). We review a § 1915(d) dismissal for abuse of discretion. Moore v. Mabus, 976 F.2d 268, 270 (5th Cir. 1992).

Horton agrees that the statute of limitations on his claims began to run on December 4, 1989, but asserts that he filed a complaint on November 26, 1991, within the limitations period, in which he made the same claims as those made in the instant complaint. He asserts that the earlier complaint was dismissed

without prejudice on December 19, 1991, because he incorrectly named the City of Dallas as a defendant instead of the County of Dallas and that his present complaint relates back to the one filed on November 26, 1991. Horton does not allege that he appealed the dismissal of the 1991 complaint or that he otherwise asked the district court to reconsider its decision. Rather, Horton filed an altogether new complaint, not an amended complaint. Therefore, the provisions of Fed.R.Civ. 15(c) governing amended complaints that relate back are inapplicable, and Horton's efforts to avoid the time bar by relying on his filing of the 1991 complaint fails.

In § 1983 suits, federal courts borrow the forum state's general or residual personal injury limitations period. Owens v. Okure, 488 U.S. 235, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989); Rodriguez v. Holmes, 963 F.2d 799, 803 (5th Cir. 1992). In Texas, the applicable period is two years. Tex. Civ. Prac. & Rem. Code Ann. § 16.003(a) (West 1986). Federal law determines when a cause of action accrues. Helton v. Clements, 832 F.2d 332, 334 (5th Cir. 1987). Under federal law, a cause of action accrues the moment the plaintiff knows or has reason to know of the injury that is the basis of his complaint. Id.

As noted above, Horton concedes that the statute of limitations began to run on December 4, 1989. He filed the instant suit on January 21, 1992. Therefore, any claim relating to treatment rendered before January 21, 1990, is too late. Because Horton alleges, however, that the psychiatrist over-medicated him every two weeks from December 4, 1989, until March 24, 1990,

Horton's claim for unreasonable medical treatment and deliberate indifference to serious medical needs, allegedly occurring between January 21, 1990, and March 24, 1990, is not time-barred.

Horton challenges the dismissal of his remaining unbarred claim as frivolous, arguing that his Fourteenth Amendment right to reasonable medical care was violated, as was his Eighth Amendment protection against deliberate indifference to his serious medical needs. In his complaint, Horton alleged that he was both a pretrial detainee and a convict. Pretrial detainees are entitled to greater rights regarding medical care than are post-conviction prisoners. See Alberti v. Klevenhagen, 790 F.2d 1220, 1224 (5th Cir. 1986). Horton fails to show, however, even as a pretrial detainee, that the medical care he received violated his constitutional rights.

Pretrial detainees are protected by the Fourteenth Amendment's Due Process Clause. Cupit v. Jones, 835 F.2d 82, 84 (5th Cir. 1987). The proper inquiry under the Due Process Clause is whether conditions accompanying pretrial detention are imposed on the detainee for the purpose of punishment, inasmuch as the Due Process Clause does not permit punishment prior to an adjudication of guilt. Bell v. Wolfish, 441 U.S. 520, 535, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). "[I]f a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to `punishment.'" Id. at 539. Thus, pretrial detainees are entitled to reasonable medical care unless the failure to supply it is

reasonably related to a legitimate governmental objective. Cupit, 835 F.2d at 85; see also Mayweather v. Foti, 958 F.2d 91, 91 (5th Cir. 1992).

The facts, as Horton alleges them, show that he received continuous treatment for his complaints despite his incarceration. Horton's complaint fails to demonstrate that the amount of medication that the psychiatrist prescribed constituted "punishment" under either the Fourteenth Amendment Due Process Clause or the Eighth Amendment's Cruel and Unusual Punishment Clause which prohibits deliberate indifference to a serious medical need. Consequently, his claim against the psychiatrist lacks a basis in law. The court did not abuse its discretion when it dismissed the suit pursuant to § 1915(d).

As to Dallas County's liability, the magistrate judge (citing Collins v. City of Harker Heights, 916 F.2d 284, 286 (5th Cir. 1990)) concluded that political subdivisions cannot be held responsible for deprivations of constitutional rights under a theory of respondeat superior, unless the municipality maintained a custom or policy causing such deprivation. The magistrate judge then determined that Horton's "conclusory allegations fail[ed] to articulate any such policy or custom which caused a colorable deprivation of a constitutional right."

The district court relied on the heightened pleading requirement for such cases when it dismissed Horton's claim as to Dallas County. Subsequently, however, the Supreme Court rejected the heightened pleading requirement in § 1983 actions against

municipalities. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, No. 91-1657, 1993 WL 52174 at * 3 (U.S. Sup. Ct. March 3, 1993). Leatherman states that under the Federal Rules of Civil Procedure, a plaintiff is not required to set out in great detail the facts upon which his claim is based and is required to give only "a short and plain statement of the claim showing the pleader is entitled to relief." Leatherman at * 3 (internal quotations and citation omitted).

Although Horton's complaint comported with Leatherman's standard for stating claims against municipalities, his claim against Dallas County nevertheless lacks a basis in law. As discussed above, he fails to demonstrate that, even if Dallas County maintained the policy that he alleges, he was denied reasonable medical care or that any of the defendants were deliberately indifferent to a serious medical need.

For the foregoing reasons, the district court's judgment is AFFIRMED.