

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 92-1889  
Summary Calendar

---

RICKEY DALE ALLEN,

Plaintiff-Appellant,

versus

JIMMY DON BOYDSTON, Sheriff,  
Potter County, Texas, ET AL.,

Defendants-Appellees.

---

Appeal from the United States District Court for the  
Northern District of Texas  
(2:92 CV 11)

---

( April 16, 1993 )

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

In this case, Rickey Dale Allen, a pretrial detainee, appeals the district court's dismissal of his claims against the jail's doctor and the sheriff who administers the jail. Finding that Allen's claims are frivolous, we affirm the district court's dismissal of Allen's claims under 28 U.S.C. § 1915(d).

---

\*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 Pursuant to that Rule, the court has determined that this opinion should not be published.

I

The appellant, Rickey Dale Allen, is a pretrial detainee incarcerated in the Potter County Correctional Center (the "jail"). The Potter County Sheriff is Jimmy Don Boydston and the jail's doctor is Ronald Lacy.

Allen is HIV positive. Allen learned he is HIV positive when the jail's medical staff tested him for the virus. The jail's medical staff did not keep Allen's medical condition confidential. When the other inmates learned about Allen's condition, they harassed and ridiculed him. In his objection to the magistrate judge's second report, Allen speculates that Dr. Lacy is responsible for the disclosure of his condition, but this allegation does not appear in Allen's pleadings.

On several occasions, the jail's staff placed Allen in medical lockdown because of his condition. Medical lockdown is a unit in the jail the state reserves for prisoners with serious medical problems. The state restricts contacts between prisoners in medical lockdown and the other prisoners. Part of the time that Allen was in medical lockdown, the heating system did not work and he caught several colds. In addition, Allen feared that he would come down with pneumonia and die. Later, the state moved Allen to another part of the jail where the heating system worked properly.

II

In January of 1992, Allen filed this § 1983 action in the United States District Court for the Northern District of Texas

against Sheriff Boydston and Dr. Lacy. Allen brought the complaint in forma pauperis. In his complaint, Allen alleged that Boydston and Lacy violated his due process rights, failed to keep his condition confidential, and failed to provide heat during the winter. The magistrate judge recommended that the district court dismiss all of the causes of action against Lacy and the cause of action against Boydston for failure to keep Allen's medical condition confidential. The magistrate judge also ordered the United States Marshal to serve Boydston on the remaining issues.

In February of 1992, Boydston filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The magistrate judge ordered Allen to respond to Boydston's motion, but Allen did not comply. The magistrate judge issued his final report in September of 1992 recommending that the district court dismiss all of Allen's claims. After Allen filed a written objection to the magistrate judge's report, the district court dismissed the proceeding with prejudice. Allen appeals.

### III

#### A

We begin with Allen's claims against Dr. Lacy. Because Allen could not pay the court fees, he brought this action pursuant to 28 U.S.C. § 1915. Under this section, a district court can waive a plaintiff's court fees. To deter plaintiffs without means from bringing meritless suits, § 1915(d) provides that the district court may dismiss the case if the court is "satisfied that the

action is frivolous or malicious." In the context of § 1983, we have held that a claim is frivolous if there is no "factual or legal basis, of constitutional dimension, for the asserted wrong." Spears v. McCotter, 766 F.2d 179, 181 (5th Cir. 1985) (quoting Watson v. Ault, 525 F.2d 886, 892 (5th Cir. 1976)). We review the district court's decision to dismiss a claim as frivolous under § 1915(d) for an abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

Allen has failed to allege facts that demonstrate that Dr. Lacy has done anything wrong. Allen claims that Lacy or one of the nurses let the guards see Allen's medical records. The guards, however, are entitled to know that Allen is HIV positive because they are his custodians, and they may have to come into physical contact with him or render emergency medical care. The guards also need this information to protect other inmates from infection. See Glick v. Henderson, 855 F.2d 536 (8th Cir. 1988) (inmates sued prison authorities for failing to protect them from exposure to the HIV virus). Thus, the district court did not abuse its discretion when, on authority of 28 U.S.C. § 1915(d), it dismissed this claim.

In one of his pleadings, Allen alleged that Lacy had him placed in medical lockdown. It now appears that on appeal Allen blames the sheriff for his confinement in medical lockdown; nevertheless, recognizing this appeal as one prosecuted pro se, we will address this claim against Dr. Lacy as one presented on appeal. As a prison official, Lacy's actions are cloaked in a

qualified immunity that protects him from liability unless he violates clearly established law. See Mitchell v. Forsyth, 472 U.S. 511, 105 S.Ct. 2806 (1985). Texas law authorizes prison authorities to segregate inmates who are HIV positive. Tex. Crim. Code Ann. art. 46A.01 (West Supp. 1993). Furthermore, a majority of the courts that have considered the issue have found that prison officials who segregate HIV positive inmates do not violate the inmates' civil rights. See Harris v. Thigpen, 941 F.2d 1495 (11th Cir. 1991); but see Nolley v. County of Erie, 776 F.Supp. 715 (W.D. N.Y. 1991). Under our precedents, Lacy's qualified immunity protects him from liability because he did not violate clearly established law and, thus, the district court did not abuse its discretion when it dismissed this claim.

Finally, Allen asserts that Dr. Lacy has neglected him because Lacy does not take T-cell counts and because Lacy told Allen that he does not know how far Allen's HIV illness has progressed. Allen did not present these issues to the district court and has only raised them in his reply brief on appeal. Accordingly, we will not consider these issues. See Self v. Blackburn, 751 F.2d 789, 793 (5th Cir. 1985).

B

We now turn to Allen's claims against Sheriff Boydston. For the reasons stated above, Allen's claims that Boydston either revealed Allen's medical condition or placed Allen in medical

lockdown are frivolous, and the district court properly dismissed them.

Allen, however, also contends that Boydston improperly placed him in a cell where the heating system was inoperative. The district court dismissed this claim pursuant to Rule 12(b)(6) because Allen failed to state a claim upon which it could grant relief.

Boydston contends that Allen's complaint for lack of heat fails to raise a constitutional issue. Boydston argues that Allen must show that Boydston's failure to repair the heating system constituted punishment. Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861 (1979). In Bell, the Supreme Court held that the government may detain a pretrial detainee to "ensure his presence at trial and may subject him to restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution." Id., at 536-537. The Supreme Court further explained that:

if a particular condition or restriction of pretrial detention is reasonably related to a legitimate government objective, it does not, without more, amount to punishment. Conversely, if a restriction or condition is not reasonably related to a legitimate goal-if it is arbitrary or purposeless-a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees.

Id., at 539 (internal cites omitted). In applying this standard, we have found that "prison officials [have] a duty, at a minimum, not to be deliberately indifferent to [a detainee's] serious

medical needs." Cupit v. Jones, 835 F.2d 82, 85 (5th Cir. 1985) (citing Partridge v. Two Unknown Police Officers of Houston, 791 F.2d 1182 (5th Cir. 1986)).

Applying this standard to the case before us, we find that a pretrial detainee has stated a constitutional claim only if he alleges that a prison official was deliberately indifferent to the lack of heat in the detainee's cell. Allen does not allege that Boydston was deliberately indifferent to the conditions of his incarceration. Moreover, the facts suggest that Boydston was not deliberately indifferent to the conditions in Allen's cell because Boydston did have his staff move Allen to a heated cell. At most, the allegations in Allen's complaint demonstrate that Boydston temporarily neglected Allen while attending to other matters. Thus, Allen's complaint does not raise a constitutional issue.

In addition, we note that Allen has not suffered any damages. In the absence of actual damages, a § 1983 plaintiff can theoretically recover punitive damages and attorney's fees. Ryland v. Shapiro, 708 F.2d 967, 976 (5th Cir. 1983). In this case, however, Allen has not alleged any facts that would support an award of punitive damages and because he is representing himself pro se he is not entitled to attorney's fees. Thus, even if Allen had properly alleged a constitutional violation, we would still have to affirm the district court's dismissal of this case.

III

For all of the foregoing reasons, we AFFIRM the district court's dismissal of this proceeding.

A F F I R M E D.