UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-2925

(Summary Calendar)

WESLEY PAUL WYNN,

Plaintiff-Appellant,

versus

CITY OF WEBSTER, ET AL.,

Defendants,

CITY OF WEBSTER, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas
CA H 91 2924

September 2, 1993

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

Wesley Paul Wynn appeals summary judgment of his civil rights action. Finding no genuine issue of material fact regarding his claims that police officers used excessive force in arresting him and denied him reasonable medical care, we affirm.

---

[*] Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Wynn was riding a bicycle when he rounded a corner and crashed. He was then arrested by police officers Ronald Sillivan and Kevin Kelley for public intoxication. After he awoke from his drunken state in the Webster City Jail,[1] Wynn allegedly began to experience great pain in his left knee, which prompted him to begin crying. Wynn alleges that Sergeant Charlie Propst told him to stop crying. Wynn further alleges that when an unidentified officer attempted to move him to a back cell, he passed out. When he next awoke, he was in an ambulance accompanied by Sergeant Propst. Wynn concedes that Sergeant Propst arranged to take him to the hospital.

Wynn brought suit under 42 U.S.C. § 1983 (1988) against the City of Webster,[2] and its officers, Sillivan, Kelley, and Propst. Wynn claimed that officers Sillivan and Kelley used excessive force in arresting him, resulting in the injury to his knee. He also claimed that Sergeant Propst denied him reasonable medical care. Sillivan filed a motion to dismiss the complaint for failure to state a claim upon which relief may be granted, *see* Fed. R. Civ. P. 12(b)(6), and Propst filed a motion for summary judgment. Treating Sillivan's motion as a motion for summary judgment,[3] the district court granted both motions. After it dismissed the action against

---

[1] Wynn concedes that he "was so inebriated that he had no independent knowledge or recollection of the arrest process, nor transfer to the Webster City Jail." *See* Brief for Wynn at 3.

[2] The City of Webster filed a motion to dismiss, which the district court granted. Because Wynn does not challenge this order on appeal, we need not address the issue.

[3] *See* Fed. R. Civ. P. 12(c) ("If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 . . . .").

Kelley for failure to obtain service, the court entered final judgment, from which Wynn filed a timely notice of appeal.

We review the district court's grant of a summary judgment motion de novo. *Davis v. Illinois Cent. R.R.,* 921 F.2d 616, 617-18 (5th Cir. 1991). Summary judgment is appropriate if the record discloses "that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A party seeking summary judgment bears the initial burden of identifying those portions of the pleadings and discovery on file, together with any affidavits, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett,* 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). Once the movant carries its burden, the burden shifts to the non-movant to show that summary judgment should not be granted. *Id.* at 324-25, 106 S. Ct. at 2553-54. While we must "review the facts drawing all inferences most favorable to the party opposing the motion," *Reid v. State Farm Mut. Auto. Ins. Co.,* 784 F.2d 577, 578 (5th Cir. 1986), that party may not rest upon mere allegations or denials in its pleadings, but must set forth specific facts showing the existence of a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 256-57, 106 S. Ct. 2505, 2514, 91 L. Ed. 2d 202 (1986).

The only summary judgment evidence even remotely supporting Wynn's claim of excessive force is the medical evidence of his injured knee. Significantly, Wynn's other summary judgment evidence))a deposition by an eyewitness to the crash and

arrest))does not substantiate his claim. The eyewitness stated that the arresting "officers were profecional [sic] and only used [Wynn's] arms to restrain him." Record on Appeal tab 34, at 174. Consequently, Wynn's evidence shows that the arresting officers used minimal force and that he discovered he had a broken knee when he woke up in jail. Because Wynn has not met his burden of setting forth specific facts showing the existence of a genuine issue for trial, *see Liberty Lobby,* 477 U.S. at 256-57, 106 S.Ct. at 2514, we hold that summary judgment as to Sillivan was proper.

Wynn's summary judgment evidence is similarly sparse regarding his claim that Sergeant Propst defendant denied him reasonable medical care. "[P]retrial detainees are entitled to reasonable medical care unless the failure to supply that care is reasonably related to a legitimate government objective." *Cupit v. Jones,* 835 F.2d 82, 85 (5th Cir. 1987). Wynn's own summary judgment evidence shows that Sergeant Propst was responsible for bringing Wynn to the hospital, and that Propst did so immediately after first learning of the injury to Wynn's left knee. Aside from the bare allegations in his pleadings,[4] Wynn has not produced any evidence which would create an issue for trial as to whether Sergeant Propst denied him reasonable medical care. We therefore hold that summary judgment as to Sergeant Propst was also proper.

Accordingly, the district court's judgment is AFFIRMED.

---

[4] Wynn cannot substantiate his allegation that Sergeant Propst let Wynn "suffer severe pain for several hours after it became known to [Propst] that [Wynn] was in need of medical care." Brief for Wynn at 8.