

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3229
Summary Calendar

CHARLES E. LEWIS,

Plaintiff-Appellant,

versus

BRUCE N. LYNN, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Middle District of Louisiana
CA 90 1267 B M1

(March 22, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Louisiana prison inmate Charles E. Lewis sued Bruce Lynn, Secretary of the Louisiana Department of Corrections, and emergency medical technician Eddie Veades pursuant to 42 U.S.C. § 1983. Lewis alleged that Veades violated his constitutional rights by depriving him of adequate medical care and that Lynn was liable for Veades' conduct due to Lynn's supervisory position.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Specifically, Lewis alleged that he injured his back, right eye, right hand, and neck in a fight with his cell-mate.¹ Officer Veades examined Lewis after guards stopped the fight. According to Lewis, Veades acted flippantly, cursed at him, conducted only a sham medical examination, and violated prison policy by refusing to take him to the hospital.

The magistrate judge recommended granting the defendants' motion for summary judgment. Lewis did not oppose the motion for summary judgment or file objections to the magistrate judge's report. Finding no evidence of a constitutional violation, the district court granted summary judgment in favor of the defendants and dismissed the suit. The court further found that the claims against defendant Lynn were not actionable under § 1983 because they were based solely on his supervisory status.

I

This court conducts a de novo review of a district court's grant or denial of summary judgment. Reese v. Anderson, 926 F.2d 494, 498 (5th Cir. 1991). For summary judgment to be granted, the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, must demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.

¹Lewis also alleged that the fight aggravated his asthma, but he stated that he was able to use medication in his cell to ward off an attack. He did not allege a need for medical treatment for asthma. R. 9.

56(c); L & B. Hospital Ventures, Inc. v. Healthcare International, Inc., 894 F.2d 150, 151 (5th Cir.), cert. denied, 111 S.Ct. 55 (1990). Although fact questions are considered with deference to the non-movant, Rule 56 "requires the entry of a summary judgment against the party failing to make a showing sufficient to establish the existence of an element essential to that party's case." Id. (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)).

Lewis' brief does not address the district court's ruling that Lynn could not be held vicariously liable under § 1983. Therefore, his claims against Lynn are waived. See Wesson v. Oglesby, 910 F.2d 278, 280 n.1 (5th Cir. 1990).

In support of their motion for summary judgment, the defendants submitted certified copies of Lewis' prison records. The records show that Officer Veades examined Lewis approximately 25 minutes after the fight. Veades' triage report classified Lewis as a "non-emergency." Veades reported that Lewis had a minor, non-bleeding, abrasion on his hand; that his back was sore from being pressed against a wall; and that Lewis' cellmate had stuck his finger in Lewis' right eye. Lewis' eye was red, but he did not have blurred vision or active bleeding. Lewis told Veades that his vision was normal. Veades gave Lewis Betadine salve for his abrasions. Two days later, Officer Scott gave Lewis some prescription eye-drops. It is not clear from the record whether Veades or Scott ordered the eye-drops.

Deliberate indifference to a prisoner's serious medical need violates the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). Negligent medical care, however, is not actionable under § 1983. Similarly, a prisoner's disagreement with his medical treatment will not support a § 1983 claim. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Lewis' claim fails because he has not demonstrated that he suffered deliberate indifference to a serious medical need. Although his eye was red, he told Officer Veades that his vision was normal. While Veades may have been negligent for failing to provide Lewis with eye-drops more quickly, negligent medical care will not support a suit under § 1983.

Lewis also alleges that Veades violated prison policy by refusing his direct request to be taken to the prison hospital. This claim is not actionable under § 1983. See Jackson v. Cain, 864 F.2d 1235, 1251-52 (5th Cir. 1989) (failure to follow state procedural regulations does not establish a due process violation). Lewis' allegation that Veades cursed at him will not support § 1983 relief, either. Verbal harassment does not infringe a constitutional right and is not actionable under § 1983. Emmons v. McLaughlin, 874 F.2d 351, 353 (6th Cir. 1989); cf. McFadden v. Lucas, 713 F.2d 143, 146 (5th Cir.), cert. denied, 464 U.S. 998 (1983) (threatening language and gestures not actionable).

II

Without citing authority, Lewis suggests that the district court should have instructed him how to conduct discovery so that he could have obtained his medical records. Discovery matters are entrusted to the "sound discretion" of the district court. Richardson v. Henry, 902 F.2d 414, 417 (5th Cir.), cert. denied, 111 S.Ct. 260 (1990) and cert. denied, 111 S.Ct. 789 (1991). In any event, Lewis received a copy of the record of his prison administrative proceedings (which included his medical records) when the defendants filed those documents in the district court. This argument is without merit.

III

Lewis urges that the district court should have granted him an extension of time in which to file objections to the magistrate judge's report because he was in administrative lockdown. In connection with this argument, Lewis has filed a related motion requesting that this court consider the full record in the district court. Lewis did not request that the district court allow him additional time to respond to the report. He states in brief that he did not file a response to the motion for summary judgment because he was working on other lawsuits² and was in administrative detention. 28 U.S.C. § 636(b)(1) makes no provision for extending the time in which parties may file objections to a magistrate

²Lewis presently has pending three other federal lawsuits and nine state court suits.

judge's report. See 28 U.S.C. § 636(b)(1). Even assuming, arguendo, that Lewis should have been granted an extension of time in which to file objections, he is still not entitled to relief because he has not shown that he could have responded in a way that would have changed the result. Fed. R. Civ. P. 61.

IV

Lewis suggests that the district court should have appointed counsel to help him prepare his case. A trial court is not required to appoint counsel for an indigent plaintiff asserting a claim under § 1983 unless there are exceptional circumstances. Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982).

Lewis' complaint is straightforward. He does not need legal skills or training to inform the court adequately of his allegations. See Feist v. Jefferson County Com'rs Court, 778 F.2d 250, 253 (5th Cir. 1985). The district court did not abuse its discretion by failing to appoint counsel in this case.

V

Lewis suggests that Veades' failure to diagnose his injuries properly caused him to suffer emotional distress. Lewis could recover compensatory damages for emotional distress under § 1983 only if he proved "actual injury caused by the denial of his constitutional rights." Memphis Community School Dist. v. Stachura, 477 U.S. 299, 307, 106 S.Ct. 2537, 91 L.Ed.2d 249 (1986); see also Henschen v. City of Houston, Tex., 959 F.2d 584, 588 (5th Cir. 1992). Because Lewis has not demonstrated that Veades'

conduct resulted in a constitutional deprivation, his claim for damages resulting from such a deprivation must fail.

VI

For the reasons set out in this opinion, the judgment of the district court is

A F F I R M E D.