UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-3980
Summary Calendar

BARRY CHAVIS,

Plaintiff-Appellant,

VERSUS

JOHN P. WHITLEY, Warden,
Louisiana State Penitentiary, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
CA 92 430 A M1

May 5, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:[1]

Chavis challenges the district court's grant of summary judgment rejecting his § 1983 action against prison physicians and officials for damages for denial of medical care. We affirm.

I.

Barry Chavis, proceeding pro se, filed an action pursuant to 42 U.S.C. § 1983, alleging that he was denied adequate medical

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

treatment. Named as defendants were John P. Whitley, warden at the Louisiana State Penitentiary, Ella L. Fletcher, Hospital Administrator at the penitentiary, and Susan Bankston, a medical doctor employed at the penitentiary hospital.

Chavis alleged that he was treated for a back injury at an Illinois correctional center and that an orthopedist there determined that his condition possibly required surgery. Chavis alleged that after his transfer to the Louisiana penitentiary, Dr. Bankston determined that he did not need surgery and refused to refer him to an orthopedist. He also alleged that the medication prescribed by Dr. Bankston did not relieve his pain.

The defendants moved for summary judgment and submitted an affidavit of Dr. Perego, a practicing physician at the penitentiary hospital. Thereafter, Chavis filed a motion to compel the production of documents, including his Illinois medical records.

The magistrate judge recommended that the defendants' motion for summary judgment be granted and denied Chavis's motion to compel. He determined that there was no evidence in the record that Dr. Bankston was deliberately indifferent to Chavis's serious medical needs, or that Chavis was required to perform work that Dr. Bankston knew was beyond his ability. He also determined that Chavis's allegations against Warden Whitley and Hospital Administrator Fletcher arose solely from their supervisory capacities and therefore failed to state a claim under § 1983. The district court adopted the magistrate judge's report and granted the defendants' motion for summary judgment. Chavis appeals.

II.

A.

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." **L & B. Hosp. Ventures, Inc. v. Healthcare Int'l, Inc.**, 894 F.2d 150, 151 (5th Cir.), **cert. denied**, 498 U.S. 815 (1990) (citing Fed. R. Civ. P. 56(c)).

Chavis first argues that the district court erred in determining that defendants did not fail to provide adequate medical treatment.[2] Chavis contends that he received inadequate medical treatment from the time of his first visit with Dr. Bankston, until approximately eleven months later, when he was treated at the orthopedic clinic. He contends that the delay of proper treatment caused his condition to worsen.

In support of their motion for summary judgment, the defendants introduced the affidavit of Dr. Perego, who attested that he personally treated Chavis and examined his medical records; that an Orthopedic Specialist treated Chavis and performed a CAT scan, resulting in a diagnosis of spondylolisthesis and disc

[2] Although Chavis refers to the "defendants" in his appellate brief, Chavis appears to drop his allegations against Warden Whitley and Administrator Fletcher.

bulges; that the Specialist did not recommend surgery; and that Chavis has been receiving and continues to receive physical therapy for his condition.

Allegations of wanton acts or omissions sufficiently harmful to evidence deliberate indifference to a prisoner's serious medical needs state a claim for relief under 42 U.S.C. § 1983. **Wilson v. Seiter**, 111 S.Ct. 2321, 2323 (1991); **Estelle v. Gamble**, 429 U.S. 97, 104-05 (1976). Deliberate indifference does not include "a complaint that a physician has been negligent in diagnosing or treating a medical condition;" rather it encompasses only unnecessary and wanton infliction of pain repugnant to the conscience of mankind. **Gamble**, 429 U.S. at 105-06.

In arguing that prison officials delayed in providing him proper medical treatment, Chavis at most raises allegations of negligence. He has not alleged "wanton acts or omissions" rising to deliberate indifference to his serious medical needs. **See Gamble**, 429 U.S. at 106. Thus, his allegations do not support a § 1983 action, and summary judgment was appropriate.

Chavis also alleges that he was forced to do strenuous work and walk long distances despite his condition. In his affidavit, Dr. Perego stated that after a CAT scan was performed, Chavis was assigned to "light duty" work status. He stated that light-duty status was appropriate and within Chavis's physical capabilities. Warden Whitley, in response to Chavis's first set of interrogatories, submitted a letter from the Field Operations Major at the penitentiary. The letter stated that light-duty squads walk

no more than two miles to their work locations, with sufficient rest periods, and that the only tool used by light-duty squads is a hoe.

A valid Eighth Amendment claim of cruel and unusual punishment exists when a prison official knowingly puts a prisoner on a work detail that is likely to aggravate the prisoner's medical condition and cause him serious injury. **See Jackson v. Cain**, 864 F.2d 1235, 1247 (5th Cir. 1989).

To the extent that Chavis alleges that light-duty status aggravated his back condition, he offers no support for this allegation. On his allegation that he should have been placed on light-duty status sooner, prison officials had no knowledge of Chavis's medical restrictions until the orthopedic clinic recommended light-duty status. Before light-duty status was recommended, Chavis was allowed to seek treatment for his condition with Dr. Bankston. Thus, no material fact issue exists with regard to Chavis's work assignment.

Chavis also alleges that the defendants deliberately falsified the affidavits that they introduced in support of their motion. Chavis does not assert which facts are false. Mere conclusory allegations are not competent summary judgment evidence and are insufficient to defeat a motion for summary judgment. **Topalian v. Ehrman**, 954 F.2d 1125, 1131 (5th Cir.), **cert. denied**, 113 S.Ct. 82 (1992).

Finally, Chavis states that his complaint "represents a crude attempt to challenge the system of administering medical care in

the prison where appellant is confined." Chavis makes only one passing reference to "the system." To the extent that Chavis alleges a systemwide deprivation of constitutional rights, he did not raise this argument below. We decline to consider this argument which is raised for the first time on appeal. **See United States v. Sherbak**, 950 F.2d 1095, 1101 (5th Cir. 1992).

B.

Second, Chavis argues that the district court erred in failing to grant his motion to compel the defendants to produce his medical records from Illinois.[3] He contends that if the records were produced, he could have proven that he had a condition which required treatment, perhaps surgery.

This court reviews a district court's discovery rulings for abuse of discretion. **See Mayo v. Tri-Bell Indus., Inc.**, 787 F.2d 1007, 1012 (5th Cir. 1986). Although Chavis argued that his medical records at the penitentiary referred to the Illinois medical records, the magistrate judge relied on the defendants' statements that they did not possess the Illinois records. The district court's ruling was not arbitrary or clearly unreasonable. **See id.** Thus, the district court did not abuse its discretion in denying Chavis's motion to compel.

AFFIRMED.

[3] Although Chavis filed his motion to compel with regard to several documents, on appeal he refers only to his medical records from Illinois.