

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-4597
Summary Calendar

CALVIN BATES

Plaintiff-Appellant,

VERSUS

CHARLES ELWONGER, Sheriff, Camp County, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
CA2 91 104

May 12, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

DUHÉ, Circuit Judge:¹

Calvin Bates appeals the summary dismissal of his § 1983 claim. Because we conclude that the magistrate judge applied the incorrect standard in assessing the validity of Bates's action, we reverse in part and remand the case for further proceedings.

I. Background and Procedural History

While incarcerated at the Upshur County (Texas) Jail, Appellant passed out in his cell. His treating physician discovered that Bates's blood pressure was dangerously high, and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

prescribed medicine to control it. Shortly thereafter, Bates was mistakenly released from jail, only to be re-arrested two days later. Upon his return to the Upshur County facility, Sgt. Jim Griswold informed Appellant that his medication had been thrown away. Without his blood pressure medication, Bates started having headaches. He requested that jail officials permit him to see a physician.

On September 7, 1990, Bates fell in the shower at the jail. He was taken to the hospital emergency room, where the ensuing examination revealed that his blood pressure was again at a dangerously high level. When the doctor inquired why he had not been taking his medicine, Bates stated that it had been disposed of, and no steps had been taken by the jail's personnel to obtain a new prescription for him. The physician then called the Upshur County Jail, and was told that Bates's medicine was in fact at the facility. Furthermore, according to Bates, the jail personnel informed the doctor that Captain Nancy Betterton, the facility's supervisor, knew that Bates's medicine was at the jail.

Bates, acting pro se, sued under 42 U.S.C. § 1983 (1988), claiming that while he was held at the Upshur County Jail, the officials in charge of his confinement were consciously indifferent to his serious medical needs. Named as defendants were Charles Elwonger, Sheriff of Camp County, Texas; Captain Nancy Betterton, Upshur County Jail Supervisor; Buck Cross, Sheriff of Upshur County; and Sergeant Jim Griswold, Upshur County Sheriff's Department. Sheriff Elwonger was dismissed with prejudice on

October 19, 1991. R. 40.² Thereafter, the remaining parties consented to trial before a magistrate judge. R. 31.

A Spears³ hearing was held, and Appellant testified about the events giving rise to his claims. The magistrate judge concluded that Bates failed to show the Appellees possessed the "culpable state of mind" necessary to support a § 1983 claim, and that the confusion regarding Bates's medicine, at most, amounted to negligence. See R. 23-24. The magistrate judge's report recommended dismissing Bates's complaint for failing to state a claim on which relief could be granted. Fed. R. Civ. P. 12(b)(6). See R. 26. Bates filed objections to this report, which were treated as a motion for reconsideration. R. 7. The magistrate judge then adopted the previously issued report as the opinion of the court, and dismissed the matter for the reasons set out therein.⁴ See R. 10.

² The Appellant does not contest the dismissal of Elwonger; his notice of appeal only refers to the judgment of May 5, 1992. R. 5. The absence of Rule 54(b) direction regarding the entry of final judgment does not vitiate the finality of Elwonger's dismissal. See Fed. R. Civ. P. 54(b). While there is language in the October 19, 1991 order seemingly directing the entry of final judgment as to Elwonger, ("[A]ll costs of court are hereby adjudged against Plaintiff, Calvin Bates, for which let execution issue if not paid within thirty days"), it is clear that the district court's "unmistakable intent" was to enter final judgment under Rule 54(b). Kelly v. Lee's Old Fashioned Hamburgers, Inc., 908 F.2d 1218, 1220 (5th Cir. 1990) (en banc). Consequently, any appeal of Sheriff Elwonger's dismissal would now be untimely. See Fed. R. App. P. 4(a)(1).

³ Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

⁴ The magistrate judge's opinion dismissing Bates's claims states that the initial report recommended the lawsuit be dismissed as frivolous pursuant to 28 U.S.C. § 1915(d). R. 7. However, the report actually recommended dismissal for failure to state a claim.

II. Standard of Review

In reviewing a dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), we accept all well pleaded facts as true and view them in a light most favorable to the plaintiff. Cooper v. Sheriff, Lubbock County, Texas, 929 F.2d 1078, 1082 (5th Cir. 1991). Dismissal cannot be upheld unless it appears beyond doubt that the plaintiff would not be entitled to recover under any set of facts that could be proved in support of the claim. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Worsham v. City of Pasadena, 881 F.2d 1336, 1339 (5th Cir. 1989); Partridge v. Two Unknown Police Officers, 791 F.2d 1182, 1185-86 (5th Cir. 1986).

III. Discussion

A. Appropriate Constitutional Framework

Bates was a pretrial detainee at the time of his incarceration at the Upshur County Jail: "We highlight this distinction between pretrial detainees and convicted prisoners because the due process clause of the fourteenth amendment accords pretrial detainees rights not enjoyed by convicted inmates under the eighth amendment prohibition of cruel and unusual punishment." Cupit v. Jones, 835 F.2d 82, 84 (5th Cir. 1987); see generally Bell v. Wolfish, 441 U.S. 520, 535 (1979) (discussing basis for disparate treatment). Appellant contends that the magistrate judge erred in applying

Fed. R. Civ. P. 12(b)(6). See R. 26. As the magistrate judge's opinion states that Bates's action will be dismissed as recommended in the report, this opinion construes the dismissal as one premised on Rule 12(b)(6).

Eighth Amendment jurisprudence to his claims, and that the Fourteenth Amendment provides the proper framework for analysis.

The magistrate judge recognized that pretrial detainees are "entitled to be free from punishment during their confinement...", and are protected from mistreatment by the Fourteenth Amendment's due process provision. R. 23. Citing Wilson v. Seiter, --- U.S. ---, 111 S.Ct. 2321 (1991), the court then evaluated whether or not the treatment of Bates rose to the level of "punishment." Wilson involved complaints from convicted prisoners on the conditions of their confinement, and the Supreme Court held that in order to constitute an Eighth Amendment violation, the plaintiffs had to demonstrate that prison officials acted with deliberate indifference to their claims. Id. at 2326-27. This reasoning was applied to the case at bar, with the magistrate judge noting "The culpable state of mind required in Wilson becomes that which is necessary to state a violation of the underlying constitutional right" R. 8.

The magistrate judge's opinion was correct in first looking for any manifest intent to punish. See, e.g., Van Cleave v. United States, 854 F.2d 82, 84 (5th Cir. 1988). Finding none, the court then concluded its inquiry. However, further examination was necessary to evaluate the validity vel non of Bates's claim. Because Wilson did not involve pretrial detainees, we do not read it as effecting a change in evaluating § 1983 claims brought by such claimants.

B. Punishment or Permissible Regulation

The starting point in our analysis is Bell v. Wolfish, 441 U.S. 520, 535 (1979). In Wolfish, pretrial detainees in a federal facility sued over the conditions of their confinement. The trial court granted broad relief to the prisoners, most of which was affirmed by the Second Circuit. See Wolfish v. Levi, 573 F.2d 118, 124 (2nd Cir. 1978). The Second Circuit stated that due process protections require that pretrial detainees "be subjected to only those 'restrictions and privations' which 'inhere in their confinement itself or which are justified by compelling necessities of jail administration.'" Id. (quoting Rhem v. Malcolm, 597 F.2d 333, 336 (2nd Cir. 1974)).

The Supreme Court reversed, holding that there was no constitutional basis for the "compelling-necessity" standard. Bell v. Wolfish, 441 U.S. at 532.

In evaluating the constitutionality of conditions or restrictions of pretrial detainees that implicate only the protection against deprivation of liberty without due process of law, we think that the proper inquiry is whether those conditions amount to punishment to the detainee. For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.

Id. at 535. Consequently, to ascertain whether a particular action or policy violates a pretrial detainee's due process rights, "[a] court must decide whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose." Id. at 538.

To evaluate whether or not a pretrial detainee was impermissibly punished, the logical starting point is whether there

is any express intent to punish. Id. Absent such "smoking gun" evidence, a court must next inquire whether the action or policy affecting the detainee is reasonably related to a legitimate governmental objective. Block v. Rutherford, 468 U.S. 576, 585 (1984); Bell v. Wolfish, 441 U.S. at 538-39; see also Olgin v. Darnell, 664 F.2d 107, 109 (5th Cir. 1981) (actions are not punishment in constitutional sense if they are "rationally related to a legitimate nonpunitive governmental purpose and not excessive in relation to that purpose."). Finding a rational relation between the official action or policy and the stated governmental objective, (e.g. security), a court should normally defer to the expertise of those who run correctional facilities. See Rutherford, 468 U.S. at 584-85; Wolfish, 441 U.S. at 539. However, if there is no reasonable relation between the action or policy and a governmental objective, or if the governmental objective is itself illegitimate, a court may permissibly infer that the purpose of the action or policy is punitive in nature. See Rutherford, 468 U.S. at 585; Wolfish, 441 U.S. at 539; Olgin, 664 F.2d at 109.

C. Inadequate Medical Care

We applied the reasoning of Bell v. Wolfish and its progeny to a pretrial detainee's claims alleging inadequate medical care in Cupit v. Jones, 835 F.2d 82 (5th Cir. 1987): "[P]retrial detainees are entitled to reasonable medical care unless the failure to supply that care is reasonably related to a legitimate governmental objective." Id. at 85; accord Fields v. City of South Houston, Tex., 922 F.2d 1183, 1191 (5th Cir. 1991); Pfannstiel v. City of

Marion, 918 F.2d 1178, 1186 (5th Cir. 1990); Van Cleave v. United States, 854 F.2d 82, 84 (5th Cir. 1988).

A detainee's medical care could be unreasonable "if he told jail authorities that he needed his prescribed medication ... and if they did not have him examined or otherwise adequately respond to his requests," Thomas v. Kippermann, 846 F.2d 1009, 1011 (5th Cir. 1988); or, if officials knew of a serious medical condition and essentially ignored it. Fields, 922 F.2d at 1191.

In the instant case, there was never any inquiry by the district court into either the Upshur County Jail's policy on dispensing prescription medication, or the facility's policies regarding detainee access to physician services. These are issues to be dealt with on remand.

IV. Conclusion

The dismissal of the claim against Sheriff Elwonger of Camp County, Texas, is AFFIRMED. Additionally, Appellant has failed to show how Upshur County Sheriff Buck Cross deprived him of any constitutional rights. Cross played no part in the events giving rise to Bates's claims; a defendant cannot be held liable under § 1983 on a theory of vicarious liability, including respondeat superior.⁵ The dismissal of claims against Appellee Cross is, therefore, AFFIRMED.

⁵ Baskin v. Parker, 602 F.2d 1205, 1207-08 (5th Cir. 1979); see also Thompson v. Steele, 709 F.2d 381, 382 (5th Cir.) ("Personal involvement is an essential element of a civil rights cause of action."), cert. denied, 464 U.S. 897 (1983).

The district court applied Eighth Amendment reasoning to this pretrial detainee case. We remand for consideration under the Fourteenth Amendment standards discussed above. Therefore, the dismissal of claims against Appellees Betterton and Griswold is REVERSED, and the matter REMANDED.

AFFIRMED in part; REVERSED and REMANDED in part.