

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-7746

Summary Calendar

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ROOSEVELT FORD,

Plaintiff-Appellant,

versus

ANDREW THOMPSON, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
(CA-90-174-B-O)

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(February 14, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

I.

Mississippi prisoner Roosevelt Ford filed this pro se § 1983 suit against Coahoma County Sheriff Andrew Thompson and Deputy Sheriff Isaac Lee, alleging that Thompson and Lee had acted with deliberate indifference to Ford's serious medical need. Ford alleged that the defendants had ignored his complaints of problems

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

with his head, chest, and testicles, and that they had failed to provide him with prescribed medication.

After a two-day evidentiary hearing,<sup>1</sup> the magistrate judge recommended that Ford's complaint be dismissed with prejudice. Ford objected to the recommendation. Finding that Ford's objections to the recommendation were not well taken, the district court adopted the report and recommendation of the magistrate judge and dismissed the lawsuit with prejudice. Ford appealed.

## II.

Ford argues that the district court erred by admitting into evidence a pathology report from North Sunflower County Hospital. He suggests that the report is a forgery and that it was not properly authenticated. Ford also alleges that, because the report should not have been admitted into evidence, the court erred by allowing Dr. Wright to testify based on the report.

Ford did not object to the introduction of a certified copy of the report. He later attempted to introduce into evidence the same report, but agreed to the district court's suggestion that it was unnecessary to introduce duplicate copies into the record. He agreed that the report could be considered as evidence in support of his case. Ford also failed to raise this issue in his objections to the magistrate judge's report.

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<sup>1</sup>Although the district court and the magistrate judge referred to the proceeding before the magistrate judge as a "non-jury trial," it was actually an evidentiary hearing pursuant to 28 U.S.C. § 636(b)(1)(B).

To preserve a claim of error for appellate review, a party must object in a timely fashion to the admission of the evidence and state the specific ground of the objection. Fed. R. Evid. 103(a)(1); United States v. Martinez, 962 F.2d 1161, 1165-66 & n.8 (5th Cir. 1992). We may correct a forfeited error if it is a plain error that affects the substantial rights of the party. United States v. Olano, 113 S.Ct. 1770, 1777 (1993). An error is plain if it is clear or obvious, and a party must generally show prejudice in order to demonstrate that substantial rights have been affected.

Ford has failed to demonstrate that the district court plainly erred by admitting the pathology report into evidence. Fed. R. Evid. 103(a)(1); Olano, 113 S.Ct. at 1777. As Ford's arguments concerning Dr. Wright's testimony hinge on the alleged inadmissibility of the pathology report, those arguments fail also.

### III.

Ford asserts that the district court erred by admitting into evidence an emergency room report from the Northwest Mississippi Regional Medical Center. The defense attorney offered the report into evidence with the explanation that he had not received the report until a few days before trial; the hospital had not sent the report in response to his original subpoena because Ford's name was misspelled in the report. The defense attorney stated that he had provided Ford with a copy of the report. Ford informed the court that he had no objection to the admission of the report into evidence.

Ford later attempted to object to testimony concerning the report on the ground that he did not believe that he had received a copy of the report. The magistrate judge overruled the objection, explaining to Ford that he had "full opportunity" to examine the report and to object, but had not done so. Ford obliquely raised this issue in his objections to the magistrate judge's report, arguing that the report was obtained illegally because no subpoena was issued for it.

District courts have broad discretion in ruling on the admissibility of evidence. We will reverse an evidentiary ruling only when the court has clearly abused this discretion and a substantial right of a party is affected. Rock v. Huffco Gas & Oil Co., Inc., 922 F.2d 272, 277 (5th Cir. 1991). Ford does not explain how or why he was prejudiced by the admission of the report into evidence. He has not demonstrated that the court abused its discretion by admitting the report or that its admission affected a substantial right.

#### IV.

Ford argues that the district court erred by finding that Thompson and Lee were not deliberately indifferent to his serious medical need. Deliberate indifference to a prisoner's serious medical need violates the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 106 (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).

We review factual findings under the "clearly erroneous" standard. Fed. R. Civ. P. 52; Johnston v. Lucas, 786 F.2d 1254, 1257 (5th Cir. 1986). A district court's findings of fact are not clearly erroneous if they are plausible in light of the record viewed in its entirety." Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 573-74 (1985). Moreover, credibility determinations are peculiarly within the province of the district court when it sits as the trier of fact. Kendall v. Block, 821 F.2d 1142, 1146 (5th Cir. 1987). We declare testimony incredible as a matter of law only "when testimony is so unbelievable on its face that it defies physical laws." United States v. Casteneda, 951 F.2d 44, 48 (5th Cir. 1992).

Ford testified that he was transferred from Parchman penitentiary to the Rankin County Correctional Center on June 15, 1990. Upon his arrival, he filed a medical report, stating that he suffered from a problem with his had, chest, and testicles, and that he was taking two prescription medications.<sup>2</sup> According to Ford, a day or two after he arrived at the Rankin County facility, he began to submit daily sick call slips, but received no response until August 15, 1990. He stated that he submitted the sick call slips because he wanted another medical opinion concerning his

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<sup>2</sup>In the two preceding months, Ford had been examined twice by doctors who had determined that there was nothing wrong with him. The second doctor gave him prescriptions for Benadryl and Motrin. Dr. Dial testified that both drugs are available without a prescription. He characterized Motrin as "an expensive aspirin tablet." Dr. Dial stated that he believed that the Benadryl had been prescribed as an anti-anxiety drug.

testicles. After about two weeks, his prescription medications ran out and were not refilled.

On August 15, 1990, Ford was taken to the hospital at Parchman and examined by Drs. Santos and Cabanero. The doctors told Ford that he needed to have surgery on his testicles, but they did not prescribe any medication. Ford stated that Drs. Santos and Cabanero told him that they were going to make an appointment for him to see a specialist on August 22nd and that they would notify the sheriff of the appointment. Ford was not taken to this appointment. Ford alleged that Sheriff Thompson told him that he forgot about the appointment. According to Dr. Santos, the appointment with the specialist was not scheduled until September 11, 1990.

On August 23, 1990, Ford was taken to the emergency room at the Northwest Mississippi Regional Medical Center after he complained of pains in his groin. Dr. Ellis examined Ford and thought that Ford might have a urinary tract infection or epididymitis (a testicular inflammation). Ellis ordered a urinalysis<sup>3</sup> and gave Ford prescriptions for an antibiotic and a painkiller. Ford received initial doses of these drugs at the emergency room, but the prescriptions were not filled until he was transferred to Parchman the next day. A benign cyst was removed from Ford's left testicle on September 15, 1990.

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<sup>3</sup>The results of the urinalysis were normal, indicating that Ford did not suffer from either condition.

Deputy Lee and Sheriff Thompson testified that, during Ford's incarceration at the Coahoma County facility, they received only two sick leave slips and a letter from Ford. Both men testified that they had never refused or ignored a request for medical treatment from Ford.

The magistrate judge rejected Ford's testimony that he had submitted daily requests for medical attention for two months without result. The court accepted the defendants' explanation of events and found that the jail's records correctly reflected that Ford had submitted only three medical requests. The court noted that Ford is "clearly obsessed with his medical condition," and that he is unable to understand that he does not suffer from a serious medical problem. The court further noted that it does not appear from the medical evidence that anything that could have been done by physicians for Ford, even if he had submitted all of the alleged requests, was likely to change the way he felt or his own perception of his condition.

As the defendants' testimony did not defy physical laws and the record amply supports the magistrate judge's credibility determinations and factual findings adopted by the district court, those findings are not clearly erroneous.

AFFIRMED.