

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-9089

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ARTHUR W. CARSON,

Plaintiff-Appellee,

versus

JIM BOWLES, ET AL.,

Defendants,

DR. ADRIAN COLLINS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
(CA3 89 2116 H)

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(August 30, 1993)

Before JONES, DeMOSS, Circuit Judges, and BARBOUR,<sup>1</sup> District Judge  
BARBOUR, District Judge<sup>2</sup>

Defendant Dr. Adrian Collins appeals the denial by the  
district court of his motion to dismiss based on qualified  
immunity. The district court did not err in holding that the

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<sup>1</sup>Chief Judge of the United States District Court for the  
Southern District of Mississippi, sitting by designation.

<sup>2</sup>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should not be published.

Complaint filed by Plaintiff-Appellee Arthur W. Carson satisfied the heightened pleading requirement of this Circuit for section 1983 actions brought against government officials. We do not have to reach the issue left open by Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. --, 113 S. Ct. 1160 (1993) concerning the propriety of continuing to impose a heightened pleading requirement in section 1983 actions brought against government officials. We affirm.

#### I. BACKGROUND

Arthur W. Carson ("Carson") was a pretrial detainee transferred to the Dallas County, Texas, jail ("the jail") in 1989. He filed a complaint under 42 U.S.C. § 1983 against the sheriff, the county commissioners, and Appellant Dr. Adrian H. Collins ("Collins"), the jail medical director. Carson alleged, inter alia:

I have sent several request[s] for pain medication concerning my back. . . . I have also filed several grievances[.] Also[,] I told the doctor on my entrance into the jail, of my back problem, and constant pain. Before my incarceration, I [was] seeing a doctor, and receiving pain medication. The doctor refuse[s] to see me here.

The defendants, in their answer to Carson's complaint, contended that Carson's claims were barred by the doctrine of qualified immunity. The defendants then moved to dismiss for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The

magistrate judge held a Spears hearing,<sup>3</sup> during which Carson alleged that he seriously injured his back shortly before his arrest; that he told jail officials about his injury when he was transferred to the jail; that he complained directly to Collins, a medical doctor; and that he never received treatment for his injury while in jail.

The magistrate judge recommended that the action proceed against Collins on Carson's claim that he was not afforded reasonable medical care as a pre-trial detainee and that such failure was intended for a punitive purpose. The magistrate judge also recommended that the district judge dismiss Carson's complaint against all of the defendants except Collins. The district judge accepted the magistrate judge's recommendation and entered an order stating that Carson's "action shall proceed, against defendant DR. ADRIAN H. COLLINS only, on Plaintiff's claim that he was not afforded reasonable medical care as a pre-trial detainee, and that such failure was intended for a punitive purpose."

The case was referred to the magistrate judge for a recommendation when Collins once again asserted qualified immunity as a defense. Collins contended that the district court should resolve the issue of immunity before allowing discovery. The magistrate judge recommended against dismissal stating that "defendant is not entitled to assert the defense of qualified immunity from liability

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<sup>3</sup>Spears v. McCotter, 766 F.2d 179, 180 (5th Cir. 1985) allows a magistrate to conduct an evidentiary hearing to determine the factual basis of conclusory allegations contained in a pro se complaint filed by a prisoner relating to the conditions of confinement.

for failure to afford plaintiff treatment of any kind, or even to examine him." Collins objected to the magistrate judge's report, contending that the complaint failed to satisfy the heightened pleading requirement applied to section 1983 actions. The district judge rejected Collins' objections, adopted the magistrate judge's recommendation, and denied the motion to dismiss.

This Court has jurisdiction over this interlocutory appeal pursuant to 28 U.S.C. § 1291. In Mitchell v. Forsyth, 472 U.S. 511, 530, 105 S. Ct. 2806, 2817 (1985), the Supreme Court held that "a district court's denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable 'final decision' within the meaning of 28 U.S.C. § 1291 notwithstanding the absence of a final judgment."

## II. ANALYSIS

In Elliot v. Perez, this Court adopted a heightened pleading requirement for cases against state actors in their individual capacities. 751 F.2d 1472 (5th Cir.), overruled in part on other grounds by Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. --, 113 S. Ct. 1160 (1993) (holding that the heightened pleading standard may not be required in § 1983 cases alleging municipal liability). In Elliott, this Court reasoned that because the doctrine of immunity should accord the defendant-official not only immunity from liability, but also immunity from defending against a lawsuit, a plaintiff's complaint must state with factual detail and particularity the basis for the

claim, including why the defendant-official cannot successfully maintain the defense of immunity. Id. at 1478, 1482.

The qualified immunity standard shields government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Id. at 1477 n.13 (citing Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982)). Thus, the first inquiry to be undertaken in the examination of a defendant's claim of qualified immunity is whether the plaintiff has "alleg[ed] the violation of a clearly established constitutional right." Siegert v. Gilley, 500 U.S. \_\_\_\_, 111 S. Ct. 1789, 1793 (1991). If such an allegation is found, "then the court must decide whether the public official's actions could reasonably have been thought consistent with the constitutional right." Enlow v. Tishomingo County, Miss., 962 F.2d 501, 508 (5th Cir. 1992).

Carson's complaint alleges, inter alia, that during the time he was being held in the jail as a pretrial detainee, he was denied reasonable medical care. In Bell v. Wolfish, the Supreme Court defined the due process standard concerning pretrial detainees as whether conditions which accompany pretrial detention are imposed for the purpose of punishment, noting that punishment prior to an adjudication of guilt is contrary to the Due Process Clause. 441 U.S. 520, 535, 99 S. Ct. 1861, 1871 (1979).

Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to "punishment." Conversely, if a restriction or condition is not reasonably related to a legitimate goal--if it is arbitrary or purposeless--a court permissibly

may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees qua detainees.

Id. at 539, 99 S. Ct. at 1874. In Partridge v. Two Unknown Police Officers, this Court held that under the Bell v. Wolfish standard, prison officials have a duty, at a minimum, not to be deliberately indifferent to a pretrial detainee's serious medical needs. 791 F.2d 1182, 1187 (5th Cir. 1986).

This Court further clarified the duty owed to pretrial detainees in Cupit v. Jones, 835 F.2d 82 (5th Cir. 1987). The Court concluded that "pretrial 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. Consistent with the Bell v. Wolfish standard prohibiting punishment prior to an adjudication of guilt, this Court recently held that "[p]re-trial detainees are entitled to a greater degree of medical care than convicted inmates." Rhyne v. Henderson County, 973 F.2d 386 (5th Cir. 1992). Thus, as to the first inquiry, Carson has alleged the violation of a clearly established constitutional right.

Under the heightened pleading requirement for section 1983 suits against government officials, complaints containing conclusory allegations, absent reference to specific material facts, will not survive a motion to dismiss. Jackson v. City of Beaumont Police Dept., 958 F.2d 616, 620 (5th Cir. 1992) (citing Geter v. Fortenberry, 849 F.2d 1550, 1553 (5th Cir. 1988)). In

cases such as this, where government officials assert absolute or qualified immunity, this Court has concluded that

allowing broadly worded complaints . . . which leaves to traditional pretrial depositions, interrogatories, and requests for admission the development of the real facts underlying the claim, effectively eviscerates important functions and protections of official immunity.

Elliot, 751 F.2d at 1476.

In his complaint, Carson alleged that despite his requests for treatment of his back problem, he received no medical attention. During the Spears hearing, Carson made specific allegations about his back injury, his attempts to obtain treatment from Collins, and the failure of Collins to provide any treatment. This Court has noted the scope of a Spears hearing as being "in the nature of an amended complaint or a more definite statement." Adams v. Hansen, 906 F.2d 192, 194 (5th Cir. 1990). Thus, it is proper to consider testimony received during a Spears hearing when determining whether a plaintiff has satisfied the heightened pleading standard. Accordingly, the district court did not err in finding that Carson's complaint, as clarified by his Spears hearing testimony, adequately stated the basis for his claim that Collins failed to provide him reasonable medical care and such failure was not related to a legitimate governmental objective.

In Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. \_\_\_, 113 S. Ct. 1160 (1993), the United States Supreme Court reversed this Court's imposition of a heightened pleading standard in section 1983 actions alleging municipal liability because the Court found it "impossible to

square the 'heightened pleading standard' applied by the Fifth Circuit in this case with the liberal system of 'notice pleading' set up by the Federal Rules." Id. at 1163. The Court reasoned that the heightened pleading requirement was contrary to the notice pleading scheme in the Federal Rules. Id. Specifically, Rule 9(b) of the Federal Rules of Civil Procedure "address[es] the need for greater particularity in pleading certain actions, but do[es] not include among the enumerated actions any reference to complaints alleging municipal liability under § 1983."<sup>4</sup> Id. The Court recognized the desire of the courts to stem the flood of section 1983 claims against municipalities but found that such a result "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation. In the absence of such an amendment, federal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims sooner rather than later." Id.

The Supreme Court sharply distinguished section 1983 actions brought against municipalities from those brought against government officials. The Court stressed that although municipalities are afforded freedom from respondeat superior liability, this protection does not encompass the immunity from suit which is afforded government officials. Id. at 1162. The Court concluded "[w]e thus have no occasion to consider whether our

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<sup>4</sup>Rule 9(b) provides only that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally." Fed. R. Civ. P. 9(b).

qualified immunity jurisprudence would require a heightened pleading in cases involving individual government officials." Id. Because we hold that Carson met the heightened pleading requirement through the testimony elicited in his Spears hearing, we decline to consider whether such a requirement will continue to be necessary under the reasoning set forth in Leatherman regarding notice pleading under the Federal Rules of Civil Procedure.

### III. CONCLUSION

The district court did not err in declining to dismiss Carson's claim against Collins based upon the defense of qualified immunity. Carson alleged the violation of a clearly established constitutional right in that he was entitled to receive reasonable medical care as a pretrial detainee. See Cupit, 835 F.2d at 85. Furthermore, Collins' denial of such medical care was not reasonably related to a legitimate governmental objective. Id. Carson met the heightened pleading requirement during his Spears hearing by making specific allegations concerning his back injury and his failure to obtain any treatment from Collins. The order of the district court denying the defendant's motion to dismiss is therefore AFFIRMED.