UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-9561

(Summary Calendar)

ANTHONY WILLIS,

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 87 1039 H (1)

September 2, 1993

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

Anthony Willis, a state prisoner, appeals summary judgment of his civil rights action. Finding no genuine issue of material fact regarding Willis's claim that prison officials were deliberately indifferent to his serious medical needs, we affirm.

Willis brought suit against John Whitley, former warden at Hunt Correctional Center ("HCC"); C. Paul Phelps, former Secretary of the Louisiana Department of Public Safety and Corrections ("DOC"); Bobby Watts, described by Willis as the "Prisoner Medical Service Administrator at Hunt Correctional Center and at Louisiana Charity Hospital"; Dr. Perr, a treating

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[*] Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

physician at HCC;[1] and HCC. Willis claimed that Watts and Perr deliberately denied him "access to available medical treatment for [his] right hip, leg, and right foot" during the period from September 22, 1987 through November 11, 1987. Record on Appeal at 3. He also claimed that Whitley, Phelps, and HCC failed to properly "train or supervise their subordinates." *Id.* The district court granted the defendants' motion for summary judgment, from which Willis filed a timely notice of appeal.[2]

We review the district court's grant of a summary judgment motion de novo. *Davis v. Illinois Cent. R.R.*, 921 F.2d 616, 617-18 (5th Cir. 1991). Summary judgment is appropriate if the record discloses "that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A party seeking summary judgment bears the initial burden of identifying those portions of the pleadings and discovery on file, together with any affidavits, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). Once the movant carries its burden, the burden shifts to the non-movant to show that summary judgment should not be granted. *Id.* at 324-25, 106 S. Ct. at 2553-54. While we must "review the facts drawing all inferences most favorable to the party opposing the motion," *Reid v. State Farm Mut. Auto. Ins. Co.*, 784 F.2d 577, 578 (5th Cir. 1986), that party may not rest upon mere allegations or denials in its pleadings, but must set forth specific facts showing the existence of a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-57, 106 S. Ct. 2505, 2514, 91 L. Ed. 2d 202 (1986).

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[1] Dr. Perr was never served with Willis's complaint, and therefore was never a part of the underlying action. *See* Record on Appeal at 34.

[2] On appeal, Willis does not challenge the district court's summary judgment of his claim that defendants Whitley, Phelps, and HCC failed to properly train and supervise Watts and Perr. *See* Brief for Willis at 6-7. Willis also does not challenge the court's conclusion that Willis's claims against the individual state defendants in their official capacities are barred by the Eleventh Amendment. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 2312, 105 L. Ed. 2d 45 (1989). Consequently, we need not address these issues. *See Hobbs v. Blackburn*, 752 F.2d 1079, 1083 (5th Cir. 1985) (stating that issues neither raised nor briefed on appeal are deemed abandoned), *cert. denied*, 474 U.S. 838, 106 S. Ct. 117, 88 L. Ed. 2d 95 (1985).

Willis contends that the district court erred in finding no material factual issue for trial regarding his claim that prison officials were deliberately indifferent to his serious medical needs. Brief for Willis at 6-7. "Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain and states a cause of action under 42 U.S.C. § 1983. [One] is deliberately indifferent if he intentionally denies or delays access to medical care." *Walker v. Butler*, 967 F.2d 176, 178 (5th Cir. 1992) (per curiam) (citation omitted); *see also Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985) ("The legal conclusion of `deliberate indifference,' . . . must rest on facts clearly evincing `wanton' actions on the part of the defendants."). Willis has not presented any summary judgment evidence indicating that prison officials intentionally or wantonly denied or delayed access to medical care.[3] In fact, the evidence shows that surgery to replace Willis's right hip was delayed because of Willis's own desire to avoid surgery, and because various treating physicians had recommended against surgery for medical reasons.[4] *See* Defs.' Mot. Supp. Summ. J. Exs. 2-4. At most, Willis states a claim of medical negligence, which is not actionable under § 1983. *See Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991) (per curiam) ("Unsuccessful medical treatment does not give rise to a § 1983 cause of action[,] [n]or does mere negligence, neglect or medical malpractice." (citation and attribution omitted)).

Accordingly, the district court's judgment is AFFIRMED.

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[3] In partial support of its summary judgment, the district court cited Willis's medical records from Charity Hospital. *See* Record on Appeal at 99 (stating that the records indicated that Willis was treated at least fourteen times between September 22, 1987 and November 11, 1987, for pain associated with Willis's right hip, leg, and foot, as well as for Willis's insomnia, stomach pain, rectal pain, and blurred vision). Even were we not to consider these unauthenticated records to rebut Willis's claim, *see Martin v. John W. Stone Oil Distributor, Inc.*, 819 F.2d 547, 549 (5th Cir. 1987), Willis has still failed to meet his burden of setting forth specific facts substantiating his bare allegation that the defendants were deliberately indifferent to his medical needs. *See* Fed. R. Civ. P. 56(e); *Liberty Lobby*, 477 U.S. at 256-57; 106 S. Ct. at 2514.

[4] Willis does not point to any specific facts to support his bare allegation that "surgery was delayed for economical [sic] considerations." Brief for Willis at 6.