

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1072
Summary Calendar

ANDREW LEE SAMUEL,

Plaintiff-Appellant,

versus

JIM BOWLES, Sheriff,
Dallas County, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Texas
(3:82 CV 1017 T)

(October 22, 1993)

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

PER CURIAM:*

Andrew Lee Samuel, a pretrial detainee in the Dallas County Jail, was injured when the ceiling of his cell collapsed. He was treated at Parkland Memorial Hospital and returned to the jail. In a pro se civil rights suit, Samuel sued, individually and officially, Dallas County Sheriff Jim Bowles, the Dallas County

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Commissioners Court, and an "Unknown Medical Administrator Director of Dallas County." The complaint alleged that Bowles had failed to ensure Samuel's safety, that the Commissioners Court had failed to maintain a safe jail, and that the medical administrator had intentionally denied him prescribed medications and a follow-up appointment scheduled by the Parkland doctors.

The district court initially dismissed the case as frivolous for failure to state a claim. This court, noting that failure to state a claim no longer supported a 28 U.S.C. § 1915(d) dismissal, vacated and remanded for further factual development.

On remand, the district court held a Spears hearing.¹ Samuel testified that, while he was a pretrial detainee, a piece of the ceiling of his jail cell fell on him. He was hit in the back of the head, neck, and skull and rendered unconscious. Samuel was taken to Parkland Hospital, where he stayed two days. The doctors at Parkland diagnosed a "chipped vertebrae," prescribed pain medication, and suggested follow-up appointments. After his return to the jail, he was seen only by a nurse, who did not give him medication but advised him "that if there was a medication [he] was to get [he] was going to get it." He was never given medication nor was he returned to Parkland Hospital before he was transferred to TDC about two months later. During that two-month period, he was convicted. Samuel testified that for the last three years he

¹ Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

had been receiving treatments in Galveston and taking Feldene for his injuries. He also wears a brace, the entire back part of his neck is stiff, and he has blurred vision.

At the close of the Spears hearing, the magistrate judge ordered process to be issued, suggested that Samuel name as defendants Dallas County and the Sheriff in his official capacity as administrator of the jail, and gave Samuel leave to file an amended complaint.

Contrary to the magistrate judge's suggestions, Samuel listed as defendants in his amended complaint Sheriff Bowles, in both his individual and official capacities; Bowles as Medical Director, both individually and officially; and the Dallas County Commissioners Court, individually and officially. In his amended complaint, Samuel reasserted and clarified his factual allegations. At Parkland, his attending physician determined that Samuel had sustained multiple bruises on his head and skull, and x-rays indicated "some disorder to [Samuel's] neck with chipts [sic] showing." The physician prescribed "some pain medication," but "[t]he medical department under JIM BOWLES, Medical Director, refused to issue [Samuel] any medications that had been prescribed to him." Samuel had a "follow-up appointment at Parkland Memorial Hospital on March 4, 1987, however, JIM BOWLES, Medical Director, deliberately failed to schedule [Samuel] for any other appointments." Samuel reasserted his ongoing medical difficulties,

which he alleged were the result of the "denial and delay in providing medical care."

The defendants filed an answer raising various defenses. One year later, they moved to dismiss the amended complaint under Fed. R. Civ. P. 12(b)(6) and 12(b)(4) or, alternatively, for summary judgment. The motion asserted that the Commissioners Court was not a separate entity from Dallas County, which was not named as a defendant. Alternatively, if the complaint were construed as one against Dallas County, it asserted that the County had not been properly served. As for Sheriff Bowles, it asserted that the allegations did not meet the heightened pleading requirement to overcome his qualified immunity in his individual capacity. Finally, the motion asserted that Samuel had not alleged a custom or policy leading to any constitutional deprivation, and therefore had not stated a claim against Bowles in his official capacity or against Dallas County.

The district court directed the U.S. marshal to make proper service on Dallas County. It then granted the motion to dismiss without prejudice. The court held that the Commissioners Court, as a part of Dallas County, was an appropriate defendant and that service had properly been made on the County. It held, however, that Samuel had not met the heightened pleading requirement necessary to overcome Bowles's qualified immunity and that Samuel had not pleaded a policy or custom sufficient to show liability by the County or by Bowles in his official capacity. Samuel filed a

Fed. R. Civ. P. 59(e) motion, which the court denied, and this appeal ensued.

Samuel lists his sole issue on appeal as whether it was error to dismiss his claim against Bowles for failing to provide prescribed medication. His one-and-one-half page argument also focuses solely on his medical treatment claim against Bowles. Therefore, any argument against Dallas County or its Commissioners Court, or against Bowles, based on the unsafe condition of the jail ceiling has been abandoned. See Evans v. Marlin, 986 F.2d 104, 106 n.1 (5th Cir. 1993).

[P]retrial detainees are entitled to reasonable medical care unless the failure to supply that care is reasonably related to a legitimate governmental objective." Cupit v. Jones, 835 F.2d 82, 85 (5th Cir. 1987). Samuel's factual allegations are that his Parkland doctors prescribed pain medication, but that it was not given to him, and that the Parkland doctors set up a follow-up visit, but Bowles did not schedule it and therefore he was not seen again by his doctors.

A pretrial detainee may state a claim for denial of reasonable medical care if he told officials that he needed prescribed medications and they did not have him examined or otherwise adequately respond to his medical needs. Thomas v. Kippermann, 846 F.2d 1009, 1011 (5th Cir. 1988). Although no case has been found dealing with pretrial detainees, whose protection flows from the Fourteenth Amendment, this Court has held that failure to provide

medical treatment prescribed by medical professionals can, in some circumstances, state a claim under the Eighth Amendment prohibition against cruel and unusual punishment. Payne v. Lynaugh, 843 F.2d 177, 178 (5th Cir. 1988). Because pretrial detainees "are entitled to a greater degree of medical care than convicted inmates," Rhyne v. Henderson County, 973 F.2d 386, 391 (5th Cir. 1992), the same principle should apply under the Fourteenth Amendment. Samuel's factual allegations, therefore, implicate a constitutional violation.

The district court held that Samuel's complaint did not satisfy the heightened pleading requirement necessary to overcome Bowles's qualified immunity. The continuing viability of the heightened pleading requirement in qualified immunity cases is questionable. In Leatherman v. Tarrant County Narcotics Unit, ___ U.S. ___, 113 S.Ct. 1160, 1162-63, 122 L.Ed.2d 517 (1993), the Supreme Court held that a heightened pleading requirement could not be imposed on plaintiffs suing municipalities. Leatherman declined to address whether such a requirement could be imposed in cases involving a likely qualified immunity defense, 113 S.Ct. at 1162, and this Court has not yet decided the question. See Carson v. Bowles, No. 92-9089 (5th Cir. August 30, 1993) at 8-9 (unpublished; copy attached). As in Carson, the Court need not reach the question in this case because Samuel has met the heightened pleading requirement.

In Elliott v. Perez, 751 F.2d 1472, 1482 (5th Cir. 1985), the Court held that, in order to state a claim against an official who was likely to raise the defense of qualified immunity, a plaintiff had to state with particularity the factual basis of his claim including why the defendant could not successfully maintain the immunity defense. See Brown v. Glossip, 878 F.2d 871, 874 (5th Cir. 1989). Samuel's complaint is specific as to two distinct interferences with prescribed medical treatment.

Further, the right to be free from such interference was clearly established prior to 1987, the date Samuel was injured. In 1981, in Jones v. Diamond, 636 F.2d 1364, 1378 (5th Cir. Jan. 1981) (en banc), the Court delineated the "reasonable medical care" standard for pretrial detainees. Also in 1981, the Court held that denial of prescribed medical treatment could state a claim under the Eighth Amendment. Woodall v. Foti, 648 F.2d 268, 272 (5th Cir. Unit A June 1981). Therefore, Samuel sufficiently alleged actions by which, if true, Bowles violated a clearly established right.

Because Samuel's complaint was dismissed for failure to state a claim, this Court's standard of review is de novo. Jackson v. City of Beaumont, 958 F.2d 616, 618 (5th Cir. 1992). "The motion may be granted only if it appears that no relief could be granted under any set of facts that could be proven consistent with the allegations." Id. (quotations and citation omitted).

Bowles was sued as Sheriff and Medical Director of the jail. Supervisory officials cannot be held liable under § 1983 for the

actions of their subordinates. To maintain a claim against such an official, a plaintiff must allege 1) personal participation by the official or 2) implementation of an unconstitutional policy that results in the alleged injury. Mouille v. City of Live Oak, 977 F.2d 924, 929 (5th Cir. 1992), cert. denied, 113 S.Ct. 2443 (1993). Samuel's complaint alleges both. In his amended complaint, Samuel alleged that Bowles, as Medical Director, was "legally responsible for the health care services" of Dallas County inmates. He stated that, upon his return from Parkland, "[t]he medical department under JIM BOWLES, Medical Director," refused to issue his medications and that "JIM BOWLES, Medi[cal] Director, deliberately failed to schedule" his follow-up appointments at Parkland. He concluded that "JIM BOWLES, Medical Director, intentionally and deliberately denied prescribed medications to plaintiff and intentionally interfe[red] with the treatment prescribed" by Parkland doctors. Dismissal for failure to state a claim against Bowles was error.

In his brief, Samuel argues that, by denying a protective order against discovery, the district court "effectively remov[ed] any shield of immunity" from Bowles. At this stage of the proceedings, this argument is irrelevant, as dismissal was error. With further factual development, however, it is possible that Bowles may be able to show qualified immunity for his actual participation in the events underlying Samuel's claim.

The district court denied Bowles's request for protection against discovery because, although Bowles had raised qualified immunity as a defense in his answer, he had not yet moved to dismiss on those grounds. The ruling did not intimate that the defense of qualified immunity had been stricken, and Samuel offers no support for his assertion that, by denying a protective order, the district court intended to strike the defense. Qualified immunity remains a potential defense in this suit on remand.

The district court erred in holding that Samuel had not stated a claim against Bowles for interference with prescribed medical treatment. On this issue, the judgment should be vacated and remanded for further proceedings. Because Samuel has not appealed the dismissal of his claim of unsafe jail conditions, the judgment against Dallas County and Sheriff Bowles on that claim should be affirmed.