IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1398
Conference Calendar

VICTOR DON HALL,

Plaintiff-Appellant,

versus

MRS. JENKINS, Staff
Nurse Old County Jail,

Defendant-Appellee.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3 92 CV 2412 R
- - - - - - - - - -
(October 29, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

The language of the district court's opinion indicates that Hall's action was dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6); however, the defendant in the action was not served. Prior to service, an IFP complaint may be dismissed only under 28 U.S.C. § 1915(d) as frivolous. Holloway v. Gunnel, 685 F.2d 150, 152 (5th Cir. 1982). Thus, the district court's decision is treated as a § 1915(d) dismissal. See Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In general, a district court may dismiss an in forma pauperis (IFP) complaint as frivolous if it lacks an arguable basis in law or fact. Neitzke v. Williams, 490 U.S. 319, 328, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989); see Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). The standard of review is abuse of discretion. Denton, 112 S.Ct. at 1733.

It is unclear from the record whether Hall was a pretrial detainee or a convicted criminal. If Hall was a pretrial detainee, he was entitled to reasonable medical care unless the failure to supply the care was reasonably related to a legitimate government objective. See Jones v. Diamond, 636 F.2d 1364, 1378 (5th Cir.) (en banc), cert. dismissed, 453 U.S. 950 (1981). If Hall was a convicted prisoner, he must allege deliberate indifference to his serious medical needs. See Estelle v. Gamble, 429 U.S. 97, 104-05, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). Deliberate indifference is a legal conclusion which must rest on facts evincing wanton actions on the part of the defendant. Walker v. Butler, 967 F.2d 176, 178 (5th Cir. 1992). Negligent medical care does not constitute a valid § 1983 claim. Mendoza v. Lynaugh, 989 F.2d 191, 195 (5th Cir. 1993).

A district court need not afford a defendant an opportunity to amend his complaint when the defendant's complaint does not contain sufficient factual support to maintain a constitutional claim. See Jacquez v. Procunier, 801 F.2d 789, 792-93 (5th Cir. 1986); see also Graves v. Hampton, 1 F.3d 315, 318 n.12 (5th Cir. 1993) (section 1915(d) does not procedurally provide a plaintiff

an opportunity to amend his complaint before dismissal). However, "`[i]f it appears that frivolous factual allegations could be remedied through more specific pleading, a court of appeals reviewing a section 1915(d) disposition should consider whether the District Court abused its discretion by dismissing the complaint with prejudice or without leave to amend.'" Id. (quoting Denton, 112 S.Ct. at 1734).

Even under the more stringent standard applicable to the denial of medical care for convicted criminals, Hall's allegations, if accepted as true, have an arguable basis in law. Hall's allegation that the defendant "refused [him] medical attention" indicates intentional, rather than negligent, conduct. Liberally construed, Hall's allegations also indicate deliberate indifference. Thus, IT IS ORDERED that the district court's dismissal of Hall's complaint is VACATED and the case REMANDED to the district court for further proceedings.