

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1449
Summary Calendar

RICKEY SPICER,

Plaintiff-Appellant,

VERSUS

JAMES A. COLLINS,
Texas Department of Criminal Justice,
Institutional Division, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
2:92 CV 0019

August 18, 1993

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

Texas prison inmate Rickey Spicer filed suit pro se and in forma pauperis pursuant to 42 U.S.C. § 1983 alleging, inter alia, that prison officials had not provided appropriate medical treatment for his pre-existing back injury. The district court dismissed the action as frivolous pursuant to 28 U.S.C. § 1915(d). Finding no reversible error, we affirm.

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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Spicer alleged that he had been forced to work while in pain and had received disciplinary reports because he was unable to work. He also alleged that Officer Hampton had forced him to work outside in cold weather without adequate clothing, that Hampton had refused to allow him to use the restroom and had filed a false disciplinary report against him, and that there was a conspiracy at the Clements Unit to deny all grievances filed by inmates and to convict inmates on all disciplinary reports filed by guards.

Citing the instructions on the form provided for prisoner's civil rights complaints, the magistrate judge directed Spicer to file a supplemental complaint and instructed him that he would be required to file a separate lawsuit for each claim that he had "unless all claims are related to the same incident or issue."¹ Spicer moved to amend his complaint to raise only allegations concerning his medical treatment. He stated that he would file a separate lawsuit on the claims related to disciplinary charges.

The magistrate judge warned Spicer about potential FED. R. CIV. P. 11 sanctions and gave him an additional twenty days to supplement his pleadings. After Spicer submitted additional supplemental pleadings, the magistrate judge ordered both supplemental pleadings filed in the record.

II.

Spicer explained his complaints concerning his medical treatment at a Spears² hearing. He has suffered from chronic back pain since he injured his back in 1985. Before his incarceration, he was treated by a chiropractor with some success, but chiropractic treatment is not available to Texas prisoners.

Spicer reinjured his back shortly before his transfer to the Clements Unit. Dr. Revell

¹ Although we are aware of no authority for the requirement that an inmate file separate suits, Spicer does not raise this issue on appeal, so we neither pursue it nor opine whether it is error. See Brinkman v. Abner, 813 F.2d 744, 748 (5th Cir. 1987).

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

examined Spicer the day after he arrived at Clements, and he prescribed ibuprofen and heat packs for pain. The ibuprofen provided no relief, so Revell prescribed a drug called methocarbamol, which was helpful. Several months later, Revell discontinued the prescription for methocarbamol and scheduled an appointment for Spicer with Dr. Sadler, an orthopedist. Spicer was in pain while he waited for the appointment with Sadler.

Sadler took x-rays, but he did not prescribe any treatment. He scheduled Spicer to see a neurologist, who did not keep the appointment because of a family emergency. After several more months, Revell finally arranged for a neurologist to examine Spicer. One reason for the delay was that the staff neurologist quit and a replacement could not immediately be found.

While Spicer was waiting to see the neurologist, he received heat pack treatments whenever he requested them. The neurologist examined Spicer and prescribed ibuprofen and methocarbamol. The treatment helped but did not alleviate the pain completely.

Revell testified that Spicer has a chronic back injury that causes intermittent pain and muscle spasms. The orthopedist and neurologist recommended that the injury be treated conservatively.

III.

After the medical testimony was concluded, the magistrate judge discussed on the record, with Spicer, allegations concerning false disciplinary reports and Spicer's failure to be promoted to outside trustee. Spicer informed the court that he had received due process in the disciplinary hearings and agreed with the warden's testimony that Spicer had been given back all of the "good time" credit he had lost.

Evidence was presented that Spicer does not meet the medical requirements to be considered for an outside trustee position and that he had argued with the members of the committee who were reviewing his classification. Spicer did not dispute that he is earning as much "good time" in his present classification as he would if he were an outside trustee. The court informed Spicer that the foregoing claims were "not part of this lawsuit."

IV.

A complaint filed in forma pauperis may be dismissed as frivolous if it lacks an arguable basis in fact and law. A section 1915(d) dismissal is reviewed for abuse of discretion. Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

A.

Deliberate indifference to a prisoner's serious medical needs violates the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). Spicer urges, for the first time on appeal, that the defendants were deliberately indifferent to his serious medical needs because they persisted in prescribing an unidentified drug for two years after he informed them that it caused him to suffer stomach cramps. As Spicer never made this allegation in the district court, we need not consider it. Brinkmann, 813 F.2d at 748.

Revell saw Spicer frequently, and he referred Spicer for evaluation by an orthopedic surgeon and a neurologist. Spicer received medication for pain and was provided with heat treatments upon request. He has not demonstrated that he has experienced deliberate indifference to a serious medical need. Gamble, 429 U.S. at 106. He is not entitled to relief under section 1983 because the defendants have denied him treatment by a chiropractor. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991).

B.

Spicer also suggests that the district court erred by refusing to appoint counsel. A district court is not required to appoint counsel for an indigent plaintiff asserting a claim under section 1983 unless there are exceptional circumstances. Ulmer v. Chancellor, 691 F.2d 209, 212 (5th Cir. 1982). The district court has the discretion to appoint counsel for a plaintiff proceeding pro se if doing so would advance the proper administration of justice. 28 U.S.C. § 1915(d).

Among the factors to determine whether exceptional circumstances warrant appointment of

counsel in a civil rights suit, we consider (1) the type and complexity of the case; (2) whether the indigent was capable of adequately presenting the case; (3) whether he was in a position to investigate the case adequately; and (4) whether the evidence would consist in large part of conflicting testimony requiring skill in the presentation of evidence and in cross-examination. Ulmer, 691 F.2d at 213. The standard of review for the denial of counsel is abuse of discretion. Id.

Spicer has not presented any relevant argument that would suggest why counsel should have been appointed. His claims concerning denial of medical care are straightforward and were thoroughly presented at the Spears hearing. The decision not to appoint counsel was within the discretion of the district court. Ulmer, 691 F.2d at 213.

AFFIRMED.³

³ We deny Spicer's motion to supplement his pleadings and his motion for an "order to show cause and temporary restraining order and a preliminary injunction permanent" [sic].