IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1987
(Summary Calendar)

MICHAEL CARVER FLOWERS,

Plaintiff-Appellant,

versus

NEIL DENT, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:93-CV-1223-T)

(April 29, 1994)

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

PER CURIAM:[*]

Plaintiff-Appellant Michael Carver Flowers, a prisoner of the State of Texas, filed suit in forma pauperis (IFP) under 42 U.S.C. § 1983 against Defendants-Appellees Neil Dent, Bobby

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Young and Fred McManus, personnel of the Hunt County Justice Center. The principal thrust of the case dealt with alleged violations, of constitutional proportions, in food preparation and handling, as well as alleged abuses by inmate trusties and failures to address Flowers' complaints. Flowers appeals the district court's dismissal, pursuant to 28 U.S.C. § 1915(d), of his action. Finding no abuse of discretion, we affirm.

I

FACTS AND PROCEEDINGS

In June 1993 Flowers filed this civil rights complaint, criticizing the quality and quantity of the food he received, complaining about inmate trusties, and protesting that his complaints went unanswered. As relief, Flowers requested that the federal court appoint a "special master" to investigate both the food issues and Fred McManus, allegedly an "inmate trustee [sic] turnkey."

On June 30, 1993, the district court, using interrogatories, directed Flowers to explain his complaints within thirty days of receipt of those questions. On August 2, 1993, Flowers filed a notice of appeal from the June 30th "final judgment." On August 3 a magistrate judge recommended dismissing Flowers' complaint without prejudice for want of prosecution because Flowers had not returned the answers to the interrogatories.

In his objections, Flowers explained that he had been transferred to Huntsville, Texas, on July 28, 1993, and had not intentionally ignored the interrogatories. The district court

then gave Flowers until September 26, 1993, to answer the interrogatories. Meanwhile, we dismissed Flowers' "appeal" from the June 30th order.

On September 20, 1993, Flowers filed the answers to the interrogatories. A magistrate judge reviewed Flowers' complaints and recommended dismissing the action as frivolous under 28 U.S.C. § 1915(d). Over Flowers' objections, the district court adopted the magistrate judge's recommendation and dismissed his suit. Flowers timely filed a notice of appeal.

II

ANALYSIS

An IFP complaint brought under § 1983 may be dismissed as frivolous under § 1915(d) if it has no arguable basis in law or fact. Denton v. Hernandez, ____ U.S. ____, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992). We review such a dismissal for abuse of discretion. Id. at 1734; Ancar v. Sara Plasma, Inc., 964 F.2d 465, 468 (5th Cir. 1992).

In his complaint and his answers to the interrogatories, Flowers asserted that the food services at the jail were "inadequate and constitutionally impermissible." According to Flowers he did not receive "adequate" food, the kitchen facilities and equipment were "unsanitary," the cleaning program was "irregular and ineffective," and inmate workers were not properly trained. He complained, for example, that for breakfast on June 5, 1993, the jail served him a tablespoon of egg with an unidentified insect in it, two pieces of bacon, two biscuits, and

one "spoon" of jelly. Flowers' allegations are unclear but could be interpreted as contending that he received no lunch that day. He introduced his description of the food he received that day by stating that the jail provided "only one[-]half meal a day." Flowers alleged that for dinner he received a small bowl of soup made with "lift overs [sic] from too, [sic] or three days before and one sandwich which is spoiled with a cup of tea." Flowers also alleged that "[t]he floors, walls, windows, and food storage shelves throughout the food service area are soiled with dirt and rodent droppings" and that "rodent and insect infestation is excessive." Flowers further asserted that these conditions had a "substantial and immediate detrimental impact" upon his health; however, he did not allege what such impact was, nor that he was ever poisoned or rendered ill by the food.

Although Flowers did not explain to the district court whether the allegedly unconstitutional treatment he received at the jail occurred while he was a pretrial detainee or a convicted inmate, on appeal he asserts that he was a pretrial detainee. Such inmates are protected by the Due Process Clause of the Fourteenth Amendment rather than by the Cruel and Unusual Punishment Clause of the Eighth Amendment. Morrow v. Harwell, 768 F.2d 619, 625-26 (5th Cir. 1985). The Due Process Clause provides no less protection to pretrial detainees than does the Eighth Amendment to convicted prisoners, and possibly more. See Cupit v. Jones, 835 F.2d 82, 84-85 (5th Cir. 1987).

Under the pretrial detainee standard, the proper inquiry is

whether the allegedly unconstitutional condition was imposed for the purpose of punishment or was simply an incident of a legitimate governmental purpose. See Morrow, 768 F.2d at 625. If a condition is "not reasonably related to a legitimate goal -- if it is arbitrary or purposeless," a court may infer that the condition amounts to punishment. Id. In addition, the fact that a detention interfered with a prisoner's desire to live as comfortably as possible does not convert the conditions of confinement into punishment. See Bell v. Wolfish, 441 U.S. 520, 537, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). Although we are cited to no published opinions concerning pretrial detainees' complaints about unconstitutionally substandard food services at a jail (and we have found none), we did rule in Berry v. Griffith, No. 91-5078 at 2 (5th Cir. Apr. 22, 1993) (unpublished; copy attached), cert. denied, 113 S.Ct. 1338 (1993), that a detainee's complaint "that the food served to him while in jail was handled improperly amounted to no more than negligence and is insufficient to support a claim under the Due Process Clause." The Berry opinion does not relate the specific conditions that the detainee had alleged. See id.

Under the Eighth Amendment standard, an inmate must be protected "against conditions of confinement which constitute health threats but not against those which cause mere discomfort or inconvenience." Wilson v. Lynaugh, 878 F.2d 846, 849 (5th Cir.), cert. denied, 493 U.S. 969 (1989). The Eighth Amendment also requires that a state furnish its prisoners with "reasonably

adequate food." George v. King, 837 F.2d 705, 707 (5th Cir. 1988) (citation omitted). Accordingly, the Constitution does not tolerate "gulag-type death by incremental starvation." Id. According to the Supreme Court,

> conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional. To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.

Rhodes v. Chapman, 452 U.S. 337, 347, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981). Nevertheless, the Eighth Amendment may protect against future harm to inmates if that harm is "unsafe" or "life-threatening," such as a serious communicable disease, so long as "it is contrary to current standards of decency for anyone to be so exposed against his will." See Helling v. McKinney, ___ U.S. ___, 113 S.Ct. 2475, 2480-81, 125 L.Ed.2d 22 (1993). "[A] prison inmate . . . could successfully complain [under an Eighth Amendment theory] about demonstrably unsafe drinking water without waiting for an attack of dysentery." Id.

As described by Flowers, this case certainly does not concern a gulag scenario or any life-threatening harm or unsafe conditions: Flowers' allegations indicate that although the meals at the jail were not elaborate or satisfying, he did receive a varied diet. In addition, Flowers does not allege that the "spoiled" food ever rendered him ill or that the meager quantity of food made him lose weight, much less develop any physical problems. Even if the quality and quantity of the food Flowers received and the alleged

unsanitary conditions were arbitrary or purposeless, it is not arguable that they amounted to punishment. Mere negligence on the part of the jail in the way it managed the food services could not amount to a constitutional violation. See George, 837 F.2d at 707; Berry, No. 91-5078 at 2.

As Flowers has not shown that the district court abused its discretion in dismissing the action, his appeal is unavailing. Accordingly, the judgment of the district court is

AFFIRMED.