

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-2413  
Conference Calendar

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AARON LAMON MUSE,

Plaintiff-Appellant,

versus

WESLEY C. WARNER ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-H-92-528 c/w 92-576  
- - - - -  
(December 15, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

An in forma pauperis complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact. Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992). We review the dismissal of Aaron Lamon Muse's complaint for abuse of discretion. See Denton, 112 S.Ct. at 1734. We AFFIRM.

Muse must show that medical care was denied and that this denial constituted deliberate indifference to his serious medical

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

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[s]." Walker v. Butler, 967 F.2d 176, 178 (5th Cir. 1992).

The facts alleged by Muse, taken as true, show that Muse received medical care from four doctors within a three-month period. The disagreement in diagnosis between the initial doctor and the subsequent doctors does not equal denial of medical care or show deliberate indifference. Moreover, negligence, malpractice, or unsuccessful medical treatment does not amount to an Eighth Amendment violation. Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Similarly, a prisoner's disagreement with his medical treatment will not support a § 1983 claim. See id.

Muse's claim of retaliation by one of the treating doctors was not brought before the district court. "[I]ssues raised for the first time on appeal `are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice.'" United States v. Garcia-Pillado, 898 F.2d 36, 39 (5th Cir. 1990) (citation omitted). Because the retaliation issue involves factual questions, we decline to address it. See Varnado, 920 F.2d at 321.

Muse argues that the district court should have allowed him leave to amend his complaint before dismissal. Dismissal pursuant to 28 U.S.C. § 1915(d) does not provide for such a procedural protection. Graves v. Hampton, 1 F.3d 315, 318 n.12

(5th Cir. 1993). Because Muse has not alleged facts which rise to the level of an arguable claim, the district court did not abuse its discretion in dismissing with prejudice his complaint.

See id. at 319.

AFFIRMED.