

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2522
Summary Calendar

RONNIE D. HIPPI,

Plaintiff-Appellant,

VERSUS

M.L. MANNING, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-88-1513)

(December 1, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:¹

Ronnie D. Hipp appeals from an adverse judgment, following a bench trial, on his civil rights claim. We **AFFIRM**.

I.

On December 10, 1987, at the Texas Department of Criminal Justice, Institutional Division, officers Emerson and Baker were escorting inmate James Crowley to the shower when he informed them that he wanted to return to his cell without a shower. Emerson and Baker, who were new officers and did not know Crowley by name or

¹ 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 Pursuant to that rule, the court has determined that this opinion should not be published.

face, followed common practice and asked Crowley for his cell number. Crowley told them his cell was E-3-18, and Emerson and Baker placed him there. That cell was actually Hipp's. Crowley hid under the bunk in the cell until two other officers escorted Hipp to his cell. After Hipp entered the cell, and while he was still handcuffed, Crowley jumped up and stabbed Hipp 11 times. The officers immediately pulled Hipp from the cell, and he was treated at the prison infirmary and at a hospital.

Hipp filed a civil rights complaint under 42 U.S.C. § 1983 against Assistant Warden Manning and officers Emerson and Baker, claiming that, in violation of the Eighth Amendment, they failed to protect him from Crowley.² Following a bench trial, the district court held that the defendants were not deliberately indifferent to Hipp's safety and entered judgment for them.

II.

Hipp contends that the district court's findings of fact are clearly erroneous and that the defendants acted with deliberate indifference to his safety. On appeal from a bench trial, this Court reviews factual findings for clear error and issues of law *de novo*.³ *E.g.*, ***Odom v. Frank***, 3 F.3d 839, 843 (5th Cir. 1993).

² Hipp's original complaint also named Director James A. Lynaugh and included a claim that, in retaliation for filing this action, the defendants refused to transfer him to another unit. The district court dismissed that complaint as frivolous. On appeal, this court affirmed the dismissal of the retaliation claim, but vacated and remanded the portion of the judgment dismissing the failure-to-protect claim. On remand, Hipp filed an amended complaint against only Manning, Emerson and Baker.

³ "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire

Hipp attempted to establish that the defendants were aware of death threats against him by Crowley and other members of a prison gang from which Hipp had resigned, and that the assault was gang-related. To establish his failure-to-protect claim, Hipp had to show that the defendants were deliberately indifferent to his need for protection. **Wilson v. Seiter**, 501 U.S. 294, 303-04, 111 S. Ct. 2321, 2327 (1991). Under the Eighth Amendment, a prison official acts with deliberate indifference only when he knows that an inmate faces "a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." **Farmer v. Brennan**, 114 S. Ct. 1970, 1984 (1994).

Although Hipp was a known member of a prison gang, the "Texas Mafia", he notified the State Classification Board of his resignation from the gang in May 1987. But, Manning testified that he had no knowledge of Hipp's resignation until after the assault. Hipp also introduced evidence of an entry on his "travel card" indicating that State prison officials were aware that Hipp was on the Texas Mafia "hit list". But, the author of this entry testified that this information was kept only at the State bureau of classification, that he did not recall when the entry was made, and that, to his knowledge, Manning was not notified of this information. Manning testified that he was unaware of any gang-related threats against Hipp.

evidence is left with the definite and firm conviction that a mistake has been committed." **Anderson v. City of Bessemer City, N.C.**, 470 U.S. 562, 573, 105 S. Ct. 1504, 1511 (1985).

In July 1987, Crowley, an active member of the Texas Mafia, was moved to the block in which Hipp was housed. Manning testified that most of the inmates housed in that block were gang, or ex-gang, members and that he attempted to house compatible prisoners in the same block. Hipp, however, testified that he notified prison officials that he had received a gang-related death threat from Crowley. Hipp's testimony was uncorroborated, and, as noted, Manning denied any knowledge of threats made by Crowley or other gang-members. Indeed, prior to the assault, Manning believed that Hipp and Crowley were friends and were compatible, and that Hipp was compatible with all other inmates on his block. Hipp described his relationship with fellow inmates prior to the assault as "good" or "fair".

Hipp did, however, make several requests to be moved to protective custody prior to the assault. But, these requests were based on alleged threats from two unidentified Hispanic inmates who had discovered the nature of Hipp's "free world" offense -- sexual abuse of a child. Hipp allegedly feared that these unidentified inmates would attack him in the recreation yard. An investigation, which led to the denial of protective custody, revealed no evidence to support Hipp's claims of threats by the two Hispanic inmates and Hipp never claimed threats from other sources, e.g., Crowley or other gang members. Nonetheless, Hipp was given the option of indoor recreation.⁴

⁴ On the day of the assault, Hipp recreated outdoors. Hipp also had the option of refusing to recreate.

Hipp alleged that the attack was gang-related. Crowley, however, informed Manning that he attacked Hipp because Hipp wrote a disrespectful letter to Crowley's sister. Hipp admitted writing the letter, as well as a letter of apology. Following an investigation that included interviews with both Crowley and his sister, Manning concluded that the assault was not gang-related.

As to the conduct of officers Emerson and Baker, they admitted it was improper to ask Crowley for his cell assignment -- although they testified it was common practice.⁵ But, both officers denied intentionally placing Hipp in a dangerous situation.

The district court found that Manning's testimony was credible. Consequently, the court found, among other things, that, despite whatever information was available at the State bureau of classification, the defendants were unaware of any threat against Hipp by Crowley or the Texas Mafia, and that the assault was based on a purely private argument between Hipp and Crowley and was not gang-related. The district court also found that officers Emerson and Baker did not intentionally place Crowley in Hipp's cell. These findings are not clearly erroneous. See ***Price v. Austin Indep. School Dist.***, 945 F.2d 1307, 1312 (5th Cir. 1991) (clearly erroneous standard is particularly deferential when factual findings require credibility determinations).

Accepting the district court's factual findings, we conclude, as did the district court, that the defendants were reasonably

⁵ Manning denied knowledge of the practice of asking inmates for their cell assignments.

unaware of any threat to Hipp and, therefore, did not act with deliberate indifference to Hipp's safety. And, even though officers Emerson and Baker may have been negligent in placing Crowley in Hipp's cell, their conduct was not deliberately indifferent.⁶

III.

For the foregoing reasons, the judgment is

AFFIRMED.

⁶ Hipp has requested attorney's fees under 42 U.S.C. § 1988. A plaintiff is entitled to attorney's fees under § 1988 only if he is a prevailing party. See 42 U.S.C. § 1988; **Watkins v. Fordice**, 7 F.3d 453, 456 (5th Cir. 1993). Accordingly, Hipp is not entitled to such fees.