IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2535

DORIS PEREZ, Individually and as Next Friend
of STEPHANIE PEREZ and MONICA PEREZ,
Minor Daughters of MARK STEPHEN PEREZ, Deceased;
and JOHN PEREZ, Father of the Deceased,

Plaintiffs-Appellants,

VERSUS

HARRIS COUNTY, TEXAS, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 90 2689)

(June 24, 1994)

Before GARWOOD, JOLLY, and SMITH, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

Plaintiffs appeal summary judgment in their civil rights suit under 42 U.S.C. § 1983 for failure to provide adequate medical care to a pretrial detainee who died while in the Harris County jail. Findng no error, we affirm.

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 Pursuant to that rule, the court has determined that this opinion should not be published.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

A.

On July 11, 1989, Mark Perez was arrested by an officer of the Houston Police Department. The next day, at about 10:15 a.m., he was transferred to the Harris County Sheriff's Department and booked into the Harris County jail. Upon completion of intake processing, he was sent to the jail clinic, where at approximately 6:30 p.m. he was screened by Nurse Garcia. His vital signs were checked, and his general condition appeared to be good. Because he admitted using heroin, however, he was placed in a holding cell in the clinic to be examined by the doctor on duty.

Mary D'Antonio, a registered nurse, came on duty at the clinic that evening at approximately 8:00 p.m. She reviewed the medical charts of the inmates waiting to be seen by the doctor and sometime between 8:00 and 9:00 p.m. made rounds of the holding cells. She observed and spoke with Perez at that time and found him to be coherent, alert, oriented, and not in any distress.

Deputy Martin came on duty at approximately 10:00 p.m. and initially made his rounds, checking the inmates in the holding cells. He noticed that Perez and several inmates were lying sleeping on the floor of the holding cell. Since his duty station was right across from the holding cell, Martin had constant visual contact with the inmates waiting in the holding cell. He also constantly walked over to the cell to let inmates in or out. Prior to 11:00 p.m., neither Perez nor any inmate complained about feeling bad or having any problems.

At approximately 11:00 p.m., several inmates called out that Perez was having a seizure. Two nurses and deputies Martin and Verboski immediately responded. Almost immediately thereafter, D'Antonio responded. Perez was attended to and a paramedic unit was called. Houston Fire Department paramedics arrived before 11:15 p.m. and took over the CPR that had been initiated by D'Antonio. The paramedics transported Perez to Ben Taub Hospital, where he was subsequently pronounced dead at 12:15 a.m. The cause of death as certified by the medical examiner was cardiomegaly (enlargement of the heart) and micromoduler cirrhosis of the liver.

B.

On July 18, 1990, Doris Perez, individually and as next friend for her minor children, filed a three million dollar suit in state court against Harris County and Sheriff Johnny Klevenhagen under 42 U.S.C. § 1983 for deprivation of due process. The case was removed to federal court, and plaintiff amended her complaint to include various medical personnel as defendants and Perez's father as an additional plaintiff.[1] After several motions to dismiss and motions for summary judgment, the district court ultimately granted

[1] Plaintiffs only appeal summary judgment as to Harris County, Sheriff Klevenhagen, and Nurse D'Antonio.

summary judgment as to all defendants.[2] The plaintiffs moved for reconsideration, which was denied.

II.

As a preliminary matter, the defendants note that Doris Perez failed to correctly list the plaintiffs on the notice of appeal. The notice of appeal lists only "Doris Perez, et al.," but not Mark Perez's survivors by name. They argue that the phrase "et al." is insufficient to provide the required notice under Torres v. Oakland Scavenger Co., 487 U.S. 312 (1988). The 1993 amendment to FED. R. APP. P. 3(c), however, superseded Torres and now allows more informal means of notice. Although it is less confusing for the notice of appeal to name each party that seeks to appeal, the phrase "et al." is sufficient if it is "objectively clear" that the party intended to appeal. FED. R. APP. P. 3(c), note to subdivision (c). The notice of appeal therefore was sufficient as to all plaintiffs.

III.

A.

Plaintiffs contend that the district court erred in granting summary judgment to defendants on their § 1983 claim. We review a grant of summary judgment de novo. Hanks v. Transcontinental Gas

[2] In its March 17, 1993, order, the court granted summary judgment as to D'Antonio but allowed the plaintiffs to supplement their memorandum in opposition to summary judgment as to Harris County and Klevenhagen. The district granted summary judgment as to the remaining defendants in its June 14, 1993, order.

Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. Hanks, 953 F.2d at 997.

We begin our determination by consulting the applicable substantive law to determine what facts and issues are material. King v. Chide, 974 F.2d 653, 655-56 (5th Cir. 1992). We then review the evidence relating to those issues, viewing the facts and inferences in the light most favorable to the non-movant. Id. If the non-movant sets forth specific facts in support of allegations essential to his claim, a genuine issue is presented. Celotex, 477 U.S. at 327.

B.

The plaintiffs' allegations regarding Perez's death can be summarized as follows: Perez was placed in custody of the Harris County Sheriff's Department on July 12, 1989, at approximately 10:15 a.m. At that time he was suffering from alcohol withdrawal

and possibly heroin withdrawal. He informed jail personnel that he was ill and requested medical attention. Approximately eight hours later, at 6:30 p.m., he was transferred to a poorly ventilated holding cell approximately 100 square feet in area occupied by thirteen other inmates. As his condition worsened, Perez was ignored by medical personnel, deputies, and jailers. Finally, at approximately 11:00 p.m., Perez experienced alcohol withdrawal seizures, but only when the seizures with their associated urinary and fecal incontinence were observed by personnel on duty did the personnel respond to the cries for help. In response to the emergency, the cell door was closed, aid was not rendered, and the seizures were allowed to continue. When D'Antonio finally responded to the emergency, it was too late. Although paramedics were called, Perez died.

Plaintiffs further allege the following facts in regard to the Harris County jail system: At the time of Perez's death, the jail was directed by Klevenhagen. Since 1974 and at the time of Perez's death, the jail had such systemic and gross deficiencies in staffing, supervision, training, quality of personnel, and sick call procedures, that Klevenhagen and Harris County had effectively denied the inmate population adequate medical care. Moreover, the policy of denying adequate medical care to inmates at the Harris County Jail constituted tortious and outrageous conduct that had persisted for such an extended period of time that the defendants had actual knowledge of acts and omissions resulting from this policy. The defendants' failure adequately to treat Perez resulted

from this policy and constituted a deliberate, malicious, callous, and reckless indifference to his medical condition that proximately caused his death.

C.

The Due Process Clause of the Fourteenth Amendment "entitles pretrial detainees to reasonable medical care unless the failure to supply it is reasonably related to a legitimate governmental objective." Cupit v. Jones. 835 F.2d 82, 85 (5th Cir. 1987). To establish a genuine issue of material fact concerning the § 1983 claim against D'Antonio, plaintiffs must demonstrate that the D'Antonio deliberately or recklessly failed to render reasonable medical care to Perez and that the failure to render that care was not reasonably related to a legitimate governmental interest. Salas v. Carpenter, 980 F.2d 299, 307 (5th Cir. 1992). Furthermore, those individuals sued in their personal capacities (D'Antonio and Klevenhagen) are entitled to qualified immunity unless plaintiffs adduce admissible evidence that they violated clearly established constitutional law. Id. at 305-06. As to Harris County, to survive summary judgment plaintiffs must adduce admissible evidence of a policy of the county's policymaker which caused a deprivation of rights. Palmer v. City of San Antonio, 810 F.2d 514, 516 (5th Cir. 1987).

1.

Plaintiffs submitted an affidavit of a medical expert, Dr. Stockwell, who asserted that the medical care provided by D'Antonio was "well below the standard of care in Harris County, Texas," and that "her chart entries and documentation [were] grossly inadequate for the situation and the event." The district court concluded

that Dr. Stockwell's statements were merely conclusory because he failed to assert why any of his statements were true. Without factual bases to underlie his assertions, the affidavit did not create a genuine issue of fact. See Reese v. Anderson, 926 F.2d 494, 499 (5th Cir. 1991) ("[A]n opinion on the ultimate issue . . . is a textbook example of conclusoriness. What is needed in an affidavit of this sort are facts, reasons, observations, and explanations)) in a word, evidence)) not sweeping conclusions.").

Plaintiffs also refer to Perez's medical records and excepts from Stockwell's deposition as evidence that D'Antonio failed to render reasonable care by failing to observe Perez between 8:00 p.m. (when she began her shift) and 11:00 p.m. (when the emergency developed). The district court rejected these allegations because the plaintiffs failed to demonstrate how constant observation by the deputies was insufficient or why more frequent observation by D'Antonio was necessary. There was no evidence that care was unreasonable after 11:00 p.m. and no evidence that D'Antonio's action or inaction prior to 11:00 p.m. contributed in any way to Perez's death. As a result, plaintiffs failed to adduce summary judgment evidence that the care D'Antonio provided Perez was unreasonable, deliberately indifferent, or violative of clearly established constitutional law. Therefore, summary judgment was appropriate with respect to D'Antonio.

2.

As evidence of the existence of a county policy, adopted by the county's policymaker that causes constitutionally deficient medical care, plaintiffs pointed to the reports of jail monitors filed in another case, Alberti v. Sheriff of Harris County, C.A. 72-H-1094. Plaintiffs contend that these reports established that from October 7, 1987, through May 4, 1990, the Harris County jail (1) failed to comply with a consent decree agreed to by the county in Alberti regarding medical care for inmates and pretrial detainees, (2) was not accredited by the National Commission on Correctional Health Care, and (3) repeatedly demonstrated the County's deliberate indifference to the health care needs of its inmate population. In particular, the plaintiffs asserted that the County failed to comply with a portion of the consent decree containing an order regarding treatment of incoming inmates with drug or alcohol addictions.

Even assuming that the Alberti consent decree was admissible, that the evidence established a fact issue concerning the existence of a constitutionally deficient policy for administering medical care to pretrial detainees at the jail, that Klevenhagen knew about these policies, and that he failed to implement changes to these policies, plaintiffs still failed to adduce any summary judgment evidence demonstrating either that Perez himself received constitutionally deficient medical treatment or that his death resulted from one of the alleged deficiencies in the county's policy. Stockwell testified that Perez's addiction to heroin did not

necessarily represent an immediate medical problem, that it would not have been unreasonable for county medical personnel to have him wait for assessment by a physician, and that it was neither impossible nor improbable that Perez would exhibit no signs of acute medical distress prior to his seizure. Whatever problems may exist with the jail, none of these problems is shown to have contributed to Perez's death. Accordingly, summary judgment in favor of Harris County was appropriate.

3.

Klevenhagen was sued in both his personal and official capacity as sheriff. But since the real party in interest in an official-capacity suit is the governmental entity and not the named official, Hafer v. Melo, 112 S. Ct. 358, 361 (1991), and because the plaintiffs asserted identical claims against Harris County, summary judgment was appropriate on claims asserted against Klevenhagen in his official capacity. Kentucky v. Graham, 473 U.S. 159, 167 n.14 (1985). As to the claims against Klevenhagen in his personal capacity, for the reasons stated in part III.C.2, supra, summary judgment was appropriate.

IV.

Plaintiffs additionally complain that the district court refused to allow plaintiffs further to supplement the record in their motion to reconsider the grant of summary judgment. We review the district court's decision for abuse of discretion.

Fields v. City of South Houston, 922 F.2d 1183, 1188 (5th Cir. 1991).

The record reveals that plaintiffs were afforded an opportunity to provide summary judgment evidence that would raise a genuine issue of material fact. In the district court's March 17, 1993, order, the court explained the deficiencies in plaintiffs' evidence and allowed them to supplement their memorandum. Plaintiffs failed at that time to include an affidavit from another inmate or detainee that they later attempted to introduce in their motion to reconsider. Moreover, plaintiffs at no time filed a motion under FED. R. CIV. P. 56(f) requesting additional discovery. Accordingly, their motion for reconsideration was appropriately denied.

AFFIRMED.