

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-2574  
Summary Calendar

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ROBERT EARL MEKASKA,

Plaintiff-Appellee,

VERSUS

SHERIFF JOHNNY KLEVENHAGEN, et al.,

Defendants,

LENNY CHOPAN,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
( CA-H-90-1214 )

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(June 8, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Lanny Chopin, a former medical administrator of the Harris County Jail, appeals the district court's denial of his qualified immunity defense. We affirm.

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Robert Earl Mekaska filed this § 1983 action alleging denial of adequate medical care against Chopin and others. Mekaska contends that drugs were prescribed for him in the Harris County Jail, and that the nurse who issued the medication gave him eight pills. He alleges that, after he took the pills, he became dizzy and passed out, hitting his head on a sink. Thereafter, he experienced a ringing noise in his left ear and began trying to receive medical attention. Although his accident occurred on August 17, 1988, Mekaska claims that he was not allowed to see a doctor until September 28. In addition, he alleges that he did not see an ear doctor until November 18, and that it was not until January 18, 1989, that he learned that, as a result of the fall, he had lost all hearing in his left ear.

The district court directed Mekaska to provide a more definite statement of the facts, including a description of the personal involvement of each defendant. Mekaska responded by asserting that Chopin was responsible for all hospital and medical activities in the Harris County Jail; that the staff was incompetent and not properly trained; that overcrowding in the Harris County Jail is severe; that the medical personnel are not adequately supervised; and that the personnel are indifferent to the conditions.

Mekaska admits that Chopin was not personally involved in the failure of the medical personnel to treat him adequately. However, a supervisory official may be held liable when a failure to train or supervise amounts to deliberate indifference. **See Doe v. Taylor Indep. Sch. Dist.**, 15 F.3d 443, 453 (5th Cir. 1994) (en banc). We

therefore agree with the district court that, at this early stage of the case, Mekaska has alleged sufficient facts to raise a question about Chopin's qualified immunity defense.

Chopin also contends that the district court erred in allowing Mekaska to go forward with discovery. However, because the district court properly denied Chopin's motion to dismiss, it did not err in allowing Mekaska to proceed with discovery. As the magistrate judge noted, Chopin is not precluded from re-urging his defense of qualified immunity in a subsequent summary judgment motion after some discovery has occurred. **See Lion Boulos v. Wilson**, 834 F.2d 504, 507-08 (5th Cir. 1987).

AFFIRMED.