

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3395
Summary Calendar

JOSEPH SIMMONS,

Plaintiff-Appellant,

versus

RICHARD L. STALDER, Secretary of
Corrections, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Middle District of Louisiana
(92-CV-632-A-M1)

(April 26, 1994)

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

PER CURIAM:*

Joseph Simmons, a Louisiana state prisoner incarcerated in Hunt Correctional Center (HCC), filed this pro se, 42 U.S.C. § 1983 action against Governor Edwin Edwards, Secretary Richard Stalder of the Louisiana Department of Corrections, and the following employees of HCC: Head Warden C. Martin Lensing; Associate Warden

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Cornel Hubert; Medical Administrator Robert H. Abel, Jr.; Dr. Michael Hegmann; Nurse Cynthia Heard; and Nurse Angie Bourgeois, in their official and individual capacities. Simmons alleged that the defendants were deliberately indifferent to his serious medical needs and required him to perform work beyond his ability. Simmons and the defendants filed cross motions for summary judgment. The magistrate judge reported that the defendants' motion for summary judgment should be granted and recommended dismissing Simmons's complaint. Over Simmons's objections, the district court adopted the magistrate judge's report and recommendations, granted the defendants' motion for summary judgment, and dismissed Simmons's complaint.

I

Simmons's appellate brief, liberally construed, argues that the district court erred in granting summary judgment for the defendants. Simmons argues that the defendants were deliberately indifferent to his serious medical needs and forced him to work beyond his medical capabilities regarding Simmons's knee and back problems.

Simmons agrees that he has had surgery twice on his knee, that he was placed on "Light Duty Walk" status, that he had his crutches confiscated and later returned, and that he is presently on light duty indoors status. Simmons argues that he was forced to work beyond his medical capabilities when he was made to work on uneven ground in violation of his work duty status, which, in turn, made

his second surgery necessary. However, he did not refute the fact that his duty status was changed many times upon his complaint.

Simmons did not present any summary judgment evidence in support of his assertions that Dr. Hegmann and Nurses Heard and Bourgeo were deliberately indifferent to his serious medical needs in classifying his duty status. Simmons is merely disagreeing with his medical treatment, which is not sufficient to state a cause of action under § 1983. Varnado, 920 F.2d at 321. Even if it could be said that Dr. Hegmann was negligent in assigning Simmons his duty status, such negligence does not state a cognizable § 1983 claim. See Jackson, 864 F.2d at 1246. As there is no genuine issue of material fact regarding these defendants' deliberate indifference to his serious medical needs, the district court properly granted summary judgment for them, and we affirm.

Simmons generally alleges failure to supervise as the basis for his § 1983 claims against Stalder, Governor Edwards, Lensing, Hubert, and Abel. "Under section 1983, supervisory officials are not liable for the actions of subordinates on any theory of vicarious liability." Thompkins v. Belt, 828 F.2d 298, 303 (5th Cir. 1987). Consequently, the granting of summary judgment and the dismissal of the claims as to Stalder, Governor Edwards, Lensing, Hubert, and Abel are affirmed.

II

Simmons also argues that the grant of summary judgment against him should be overturned as he was denied a fair and impartial

hearing by the district court given his pro se status and the defendants' failure to cooperate in discovery. Our examination finds these arguments to be without substantial merit and certainly establish no grounds for reversal.

III

For the reasons stated herein, the judgment of the district court is

A F F I R M E D.