

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3430
Conference Calendar

EARL ROBERTSON,

Plaintiff-Appellant,

versus

JOHN P. WHITLEY, Warden,
Louisiana State Penitentiary,
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. CA-92-311-B-M1
- - - - -
(March 25, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Earl Robertson appeals the judgment of the district court granting summary judgment in favor of the defendants in his civil rights action. His arguments on appeal address only the allegation that correctional officers Nulen Moses and Michael Anthony were deliberately indifferent to his serious medical needs by interfering with his prescribed care.

We review the district court's grant of summary judgment de novo, applying the same standard as a district court. Summary judgment is proper only if the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

record discloses that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Moreover, in reviewing the record, we are not bound to the grounds articulated by the district court for granting summary judgment, for we may affirm the judgment on other appropriate grounds.

Brewer v. Wilkinson, 3 F.3d 816, 819 (5th Cir. 1993) (citations omitted). "A party seeking summary judgment bears the initial burden of . . . demonstrat[ing] the absence of a genuine issue of material fact." Rosado v. Deters, ___ F.3d ___ (5th Cir. Oct. 22, 1993, No. 92-4109, slip p. 511) 1993 WL 393601. Once the burden has been met, "the burden shifts to the non-movant to show that summary judgment should not be granted." Id. The party opposing the motion "must set forth specific facts showing the existence of a genuine issue for trial." Id.

In order to state a cognizable claim of an Eighth Amendment violation in the medical sense, prisoners must show that prison officials were deliberately indifferent to their serious medical needs constituting unnecessary and wanton infliction of pain. Estelle v. Gamble, 429 U.S. 97, 104-06, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).

The defendants supported their motion for summary judgment with sworn affidavits from prison personnel who were on duty at the time. Robertson did not file a timely opposition to the defendants' motion with competent summary judgment evidence showing the existence of a genuine issue of material fact. The evidence showed that, even if Robertson did not receive his diabetes medication in the pill packet, the actions taken by Moses and Anthony do not demonstrate a deliberate indifference to

Robertson's serious medical needs. Robertson does not dispute that the officers checked the medication report, verified that Robertson had received his pill packet, and monitored him during the rest of their shift. The officers' conduct did not implicate the Eighth Amendment; therefore, summary judgment in favor of these defendants was proper.

Assuming that Robertson's retaliation claim is properly before this Court, he has failed to make a showing of retaliatory action by either of the officers. Cf. Whittington v. Lynaugh, 842 F.2d 818, 819-20 (5th Cir.), cert. denied, 488 U.S. 840 (1988). Robertson has not demonstrated that he is entitled to relief on this claim.

Robertson contends that the district court erred in granting the defendants' motion for summary judgment before he had completed discovery. He asserts that the defendants withheld documents which he sought in his second motion to compel discovery and argues that he needed certain documents "to prove the factual allegations in his complaint."

Robertson filed no less than fifteen discovery motions requesting documents, admissions, or answers to interrogatories. He has not and cannot demonstrate that further documentary evidence regarding his undisputed diabetic condition would create a genuine issue of material fact. See Resolution Trust Corp. v. Sharif-Munir-Davidson Dev. Corp., 992 F.2d 1398, 1401 (5th Cir. 1993). The district court did not abuse its discretion in precluding further discovery by granting the defendants' motion for summary judgment. Id.

AFFIRMED. The motion for leave to proceed on appeal in forma pauperis is DENIED as unnecessary.