

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3734
(Summary Calendar)

ROGER MAYWEATHER,

Plaintiff-Appellant,

versus

C. MARTIN LENSING, Warden,
Hunt Correctional Center,
UNKNOWN HAGGMAN, Doctor, and
UNKNOWN CHAMPAGN, Physician,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
(CA-92-1047-A)

(August 3, 1994)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Roger Mayweather, a state prisoner, filed this civil rights action pursuant to 42 U.S.C. § 1983 against a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

warden and two doctors of the correctional institution where he was incarcerated. For the reasons set forth below, we conclude that the district court committed no reversible error, and therefore affirm.

I

FACTS AND PROCEEDINGS

Mayweather, an inmate at Hunt Correctional Center (HCC) in St. Gabriel, Louisiana, filed this lawsuit against HCC Warden C. M. Lensing and HCC Doctors Michael Hegmann and Champagne (correct spelling), alleging that when he was transferred to HCC on July 27, 1992, he was "placed in isolation without disciplinary reason or hearing, and [in] total disregards to serious medical needs." He further alleged that a Louisiana State University Medical Center (LSUMC) physician had prescribed Tolectin (tolmetin sodium) for "severe pains in lower back and ulcerous stomach pains"; and that, despite his continuous requests and complaints to Dr. Hegmann and the Warden, he has been denied Tolectin. He also alleged that "on 10, [sic] 1992, Dr. Champagn[e] prescribed [Dolobid] despite the irr[i]tation this medication is known [to cause] to ulcerous [conditions], and advised [him] not to make sick call again."

Mayweather next alleged that the LSUMC physician had placed him on permanent light duty indoors, with no bending or lifting over 20 pounds; but, nevertheless, at HCC he was assigned to "Squad 10 where long periods of standing and excessive bending are required digging and picking up objects." Mayweather sought declaratory and injunctive relief and all other relief due him, but

did not specify what declaratory and injunctive relief he wanted. Defendants filed a motion for summary judgment supported by (1) a statement of undisputed facts; (2) the record of an administrative-remedy proceeding (ARP); (3) Mayweather's medical records; (4) his HCC Cellblock Review Summary; and (5) the affidavit of Ray A. Pecoraro, HCC Assistant Director of Classification. Mayweather in turn filed a motion for partial summary judgment on his claims against the two doctors.

The magistrate judge's report recommended granting the defendants' summary judgment motion. Mayweather filed objections to the report under penalty of perjury, but the district court, adopting the magistrate judge's report, dismissed the action, and Mayweather timely appealed.

II

ANALYSIS

A. Motion to Compel Discovery

Mayweather contends that the district court erred by granting summary judgment without addressing his motion to compel discovery, i.e., to require the appellees to produce certain documents. He asserts that the records he requested would show that he was "threatened with disciplinary action if he continued to inquire about [Tolectin]," and that they also would show that the appellees are continuing to retaliate against him for having filed this suit and the ARPs.

The magistrate judge denied the motion to compel on grounds that Mayweather had failed to comply with Uniform Local Rule 2.11

E & M, requiring certification that the movant "has conferred with opposing counsel for the purpose of amicably resolving the discovery dispute." Mayweather neither corrected this deficiency nor appealed the magistrate judge's ruling to the district court. Although he complained about it in his objections to the magistrate judge's report, Mayweather did no more than state that "the magistrate judge should have addressed plaintiff's motion for production of documents." Consequently, we are "without jurisdiction to consider" whether the ruling was erroneous. Colburn v. Bunge Towing, Inc., 883 F.2d 372, 379 (5th Cir. 1989).

B. Administrative Segregation without a Hearing

Mayweather next contends that the district court erred by granting summary judgment on his claim that he was placed in segregation or isolation when he was transferred to HCC. He states that, although he "was assigned to Beaver 3 working cellblock, he was placed in Beaver 2 cellblock" for lack of bed space in Beaver 3. Mayweather asserts that during the week he spent in Beaver 2, he was denied Tolectin, phone calls, and his personal property. He argues that he should not have been placed in Beaver 2 "without a disciplinary reason or a disciplinary hearing."

Rule 56(c), FED. R. CIV. P., provides that the district court shall render summary judgment "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." To avoid summary judgment, the

opposing party "by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). "[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). This court's standard of review of a summary judgment ruling is the same as the district court's, and it must be based on the evidence which was presented in the district court. See Sanders v. English, 950 F.2d 1152, 1159 (5th Cir. 1992).

Appellees' Exhibit 3 (copy attached) shows that when Mayweather was transferred to HCC, the Initial Classification Board ordered his placement in Beaver 3D Cellblock. He was placed in this cellblock, on light duty, "due to his poor conduct record at WCC [Wade Correctional Center] and the fact that [at] WCC he had been classified to a maximum custody working cellblock."¹ Mayweather concedes that he was housed temporarily in Beaver 2 only because of lack of bed space in Beaver 3. Clearly, no due process right was implicated by this, because "[a]n inmate has neither a protectible property nor liberty interest in his custody classification." See Moody v. Baker, 857 F.2d 256, 257-58 (5th Cir.), cert. denied, 488 U.S. 985 (1988); Wilson v. Budney, 976 F.2d 957, 958 (5th Cir. 1992) (same).

¹ Exhibit 4 (copy attached).

C. Eighth Amendment Violation - Withholding Medication

Mayweather contends that his Eighth Amendment rights were denied by HCC's failure to provide Tolectin as prescribed by the LSUMC physician. Contrary to his assertion, however, this medication was discontinued at WCC on June 22, 1992; the LSUMC physician recommended codeine, not Tolectin.² At HCC, Tagamet was prescribed for him by Dr. Champagne "as needed," and he started receiving it on July 29, two days after he arrived there.

At his medical examination at HCC on October 16, 1992, the doctor also prescribed Dolobid. Mayweather asserts that he is entitled to relief on grounds that this medication severely aggravated his stomach ulcer. His medical records show that his Dolobid was discontinued after he complained of stomach cramps.
Id.

A convicted prisoner is not entitled to relief under 42 U.S.C. § 1983 on grounds of denial of medical care unless he shows that there was "deliberate indifference to [his] serious medical needs" Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); see Farmer v. Brennan, ___ U.S. ___, 114 S.Ct. 1970, 1994 WL 237595 (U.S., June 6, 1994) (establishing subjective definition of "deliberate indifference"). The denial of treatment recommended for an inmate's serious medical needs may constitute deliberate indifference. Payne v. Lynaugh, 843 F.2d 177, 178 (5th Cir. 1988). A disagreement between an inmate and his physician concerning whether certain medical care was appropriate is not actionable

² Exhibit 2 (copy attached).

under § 1983 unless there were exceptional circumstances. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Medical records that document sick calls, examinations, diagnoses, and medications may rebut allegations of deliberate indifference. See Mendoza v. Lynaugh, 989 F.2d 191, 193-94 (5th Cir. 1993). Mayweather's extensive prison medical records support the district court's entry of summary judgment on this claim.

D. Eighth Amendment Violation - Retaliation by Working Beyond Capabilities

Mayweather contends that the district court erred by granting summary judgment on his claim that appellees violated his Eighth Amendment rights by requiring him to perform work in violation of medical-duty status. He bases this on his allegations that while he was assigned to Beaver 3, from July 27 to October 29, 1992, he was required to clean pipe-holes and pick grass, which aggravated his back condition, "spine degeneration and vertebra (lower back) compression." Mayweather blames Dr. Champagne for having altered his duty status.

Mayweather's medical records show that when Dr. Champagne examined him on July 29, 1992, he was in "[a]pparent good health" with no discernible back problem.³ On that date the doctor placed Mayweather on "LDRS," a type of light duty. On August 13, HCC Doctor Dienst ordered "LDRS" for Mayweather, with "No bending[,] No lifting over 15 pds . . . Permanent." On October 27, 1992, a consulting physician found that Mayweather's back x-rays were

³ Id.

within normal limits (WNL). There is no showing in the record or any assertion by Mayweather of a genuine issue of material fact whether any of the named defendants-appellees were responsible for Mayweather's work assignment on Beaver 3. Warden Lensing cannot be held liable on a respondeat superior basis. See Barksdale v. King, 699 F.2d 744, 746 (5th Cir. 1983).

Mayweather asserts conclusionally that by his work assignments and "denial of due process in disciplinary procedures" the appellees have retaliated against him for filing this suit and ARPs. "Standing alone, [this] contention is frivolous." Moody v. Baker, 857 F.2d at 258 (similar allegation); see Wilson v. Budney, 976 F.2d at 958 (same).

AFFIRMED.