IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4288
Conference Calendar

ALEX WATKINS, JR.,

Plaintiff-Appellant,

versus

BOBBY WEAVER and
DEBBIE DAVIS,

Defendants-Appellees.

- - - - - - - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 92-CV-407
- - - - - - - - - - -
(March 23, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Alex Watkins, Jr.'s motion for leave to proceed in forma pauperis on appeal is hereby DENIED as moot.

Watkins appeals the denial of his Fed. R. Civ. P. 60(b) motion for relief from the judgment. The reviewing court must limit its review of a denial of a Rule 60(b) motion to whether the district court abused its discretion by denying the motion. Matter of Ta Chi Navigation Corp., 728 F.2d 699, 703 (5th Cir. 1984). There was no abuse of discretion in Watkins' case.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

First, neither in his complaint nor at the Spears hearing did Watkins state facts indicating that he wished to pursue a claim regarding the jail's grievance procedure. Moreover, even pro se plaintiffs are obliged to investigate the factual and legal bases of their claims before bringing suit. See Fed. R. Civ. P. 11.

Second, Watkins' underlying medical claim is frivolous. A district court may dismiss a complaint as frivolous "`where it lacks an arguable basis either in law or in fact.'" Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992)(quoting Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989)). "Unsuccessful medical treatment does not give rise to a § 1983 cause of action. Nor does `[m]ere negligence, neglect or medical malpractice.'" Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991)(citations omitted).

Regarding Davis, Watkins alleges that she saw him on the date of the injury and gave him aspirins and an ice pack. She denied him those items on other occasions. Davis also told Watkins shortly after his fall that there was nothing wrong with him. On Watkins' first trip to see the doctor, Davis forgot to put him on the list to see the doctor. At most, Watkins alleges negligence and neglect by Davis.

Regarding Vansickle, Watkins alleges that the doctor instructed him to stay away from the gym for two weeks and prescribed Motrin. The Motrin had little effect on Watkins' pain. The medical records, as discussed at the Spears hearing, indicate that Watkins saw Vansickle on May 12, May 26, and June

16. Watkins saw another doctor in July. He received pain killers throughout the period. Eventually, Watkins himself asked to be taken off of pain killers and requested exercise therapy. Watkins' allegations give rise, at most, to a claim of unsuccessful medical treatment. Moreover, Watkins did not name Vansickle as a defendant in his complaint.

Finally, the magistrate judge need not have allowed Watkins to file a more definite statement. The magistrate judge gave Watkins a Spears hearing, a proceeding designed to bring a pro se plaintiff's claims into focus and determine whether they are meritorious. Spears v. McCotter, 766 F.2d 179, 181 (5th Cir. 1985). That hearing was conducted properly.

APPEAL DISMISSED. 5th Cir. R. 42.2.